THE VENEZUELAN QUESTION

Castro

and

The Asphalt Trust

FROM OFFICIAL RECORDS

New York
1907

CIPRIANO CASTRO
PRESIDENT
OF THE
UNITED STATES OF VENEZUELA

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INTRODUCTORY

When Judge William J. Calhoun, of Chicago, was sent as Special Commissioner to Caracas two years ago to investigate the alleged claims of American interests against the Republic of Venezuela, it was generally anticipated that his report would be effective in clearing up a very much beclouded international complication. For some reason, unknown to the public, Judge Calhoun's report has never been published and the only official knowledge of its nature is to be found in a letter from Secretary of State Root to Minister Russell, dated November 10, 1905, as follows:

"Mr. Calhoun has not yet made his report. * * * An informal conversation with him, however, immediately following his return, has produced upon my mind an impression that when the report is submitted it will appear that there were questions between the Company (New York and Bermudez Company) and the Government of Venezuela appropriate for judicial decision, and upon the raising of which a situation was presented calling for an equitable adjustment of differences, and which cannot properly be disposed of by a simple demand based upon the idea that all the right is on one side and all the claims of the Bermudez Company unimpeachable."

Recent events have brought to light some of the facts relating to the long continued efforts on the part of the Asphalt Trust to induce our Government to pull its Venezuelan chestnuts out of the fire. It is, therefore, an appropriate time to put the American people in possession of the essential facts involved in the Venezuelan controversy. The record is somewhat voluminous, but it shows conclusively the attempt which has been, and is still being made, to use, through insidious and indirect methods, the prestige and power of the United States to save an American trust from the consequences of its unlawful and wilful acts in fomenting and fostering an insurrection against a Government with which the United States was at peace.

The newspapers have been filled with false and misleading despatches and inspired articles designed to create public sentiment hostile to President Castro, all because he has had the courage to uphold the honor and sovereignty of his Country and to defend

the inalienable right of Venezuelan Courts to hear and determine all matters within their jurisdiction.

The following pages are largely taken up with a reprint of official and semi-official documents and other matter pertinent to the case of the New York and Bermudez Company. A careful perusal of the documents and testimony presented will cause every fair minded American to recognize the justice of Venezuela's position and to wonder how our State Department can again espouse the cause of so unworthy a claimant.

My interest in, and knowledge of, this subject lies in the fact that for many years I was an officer of The Trinidad Asphalt Company, The New Trinidad Lake Asphalt Company, Limited, and The Barber Asphalt Paving Company, until I resigned from the Treasurership of the last named Company in July, 1902.

During recent years I have been an officer of The A. L. Barber Asphalt Company, which has purchased the larger portion of the shipments of Bermudez asphalt made by Mr. Ambrose Howard Carner, the Receiver appointed for the Bermudez property by the High Federal Court of Venezuela.

NEW YORK, October 15, 1907. O. E. THURBER.

49 Wall Street,
New York, October 10th, 1907.

Mr. O. E. Thurber,
90 West Street,
The City of New York.

Dear Sir:—I have read, with much interest, the advance sheets of your book entitled "Castro and the Asphalt Trust," and as requested by you, have examined the extracts from the testimony taken in this Country in the action of the "United States of Venezuela against New York & Bermudez Company," in which I acted as counsel for the Venezuelan Government, and find them to be correct, and as far as I have knowledge, the statements of fact and copies and extracts from letters, documents and opinions, are accurate, and fairly state the position of the Venezuelan Government in its controversy with the New York & Bermudez Company.

I would appreciate it if you will let me have several copies of the book when ready for distribution.

Very truly yours,
RUFUS B. COWING, JR.

CHAPTER I.

THE TRUST TRIES TO OUST CASTRO.

The Hamilton Concession.

Twenty-four years ago Guzman Blanco, then President of Venezuela, granted to an American, Horatio R. Hamilton, a concession to exploit the natural resources of the State of Bermudez. The history of this now famous concession is filled with incidents which cover the whole scale of human passions. Self-sacrifice and greed, courage and cowardice, loyalty and intrigue, honor and dishonor, all have played their parts in the shifting scenes of comedy, romance and tragedy. Persons in all stations of life have been caught in its entangling meshes, reputations have been blasted, millions of dollars have been lost, thousands of lives have been sacrificed and great nations have quarreled because of it.

As frequent reference must be made to this document in the following pages, it is here reproduced in its entirety:

[Translation.]

THE HAMILTON CONCESSION.

THE CONGRESS OF THE UNITED STATES OF VENEZUELA DECREES:—

SOLE ARTICLE.

The contract which, by medium of the Minister of Public Works, has been made and executed by and between THE NATIONAL EXECUTIVE POWER and HORATIO R. HAMILTON, for the exploration and working of the natural productions of the forests which exist in the public lands of the State of Bermudez, is approved. The tenor of the said contract is as follows:—

THE MINISTER OF FOMENTO of the REPUBLIC OF VENEZUELA, by order and duly authorized by the President, party of the first part, and HORATIO R. HAMILTON, party of the second part, have made and executed the CONTRACT contained in the clauses hereinafter expressed:

ARTICLE FIRST.

The Government grants to Mr. Horatio R. Hamilton the right to explore and work the natural products of the forests existing in the Public Lands of the State of Bermudez, he having the right to extract therefrom woods for construction, for joiner work, and others which may be used for industrial purposes, and the gums, resins, rubber, aromatic and essential plants, and those for dyeing and medicinal purposes.

The Section of Barcelona is excluded as regards the working of the woods only.

ARTICLE SECOND.

The Government also grants to Mr. Horatio R. Hamilton the right to work the asphaltum in the same State of Bermudez.

ARTICLE THIRD.

Mr. Horatio R. Hamilton may import free of all Custom-house and other duties the machinery, tools and other implements which may be required for the working of the above named productions in the State of Bermudez.

For each importation he will obtain the corresponding order of exemption of duties or imposts of any kind, presenting, when he asks for said exemption, the invoice of what he is to import, and fulfilling all the requisites of law for said clearances in the respective Custom-houses.

ARTICLE FOURTH.

The Government grants Mr. Horatio R. Hamilton the right of navigating the rivers and streams of the State of Bermudez by means of small steamers, and he has the right to take the necessary wood for fuel from the Public Lands.

ARTICLE FIFTH.

Mr. Horatio R. Hamilton binds himself to pay into the Public Treasury, two bolivars (about forty cents) for each nine hundred and ninety-nine and one-half kilograms of asphalt which he may export and five-hundredths of a bolivar for each kilogram of any of the above-mentioned natural products (excepting the woods), presenting in each case to the Collecting Bureau where he may make the payment a manifest with the number of kilograms exported.

The duties which Mr. Horatio R. Hamilton is to pay on woods will be fixed later on by an additional article to this contract.

ARTICLE SIXTH.

Should the products to which this contract refers be sold in this country Mr. Horatio R. Hamilton will pay the same contributions that are expressed in the foregoing article and in due time those which may be fixed for woods.

ARTICLE SEVENTH.

The Government will not impose any other contributions on the products which Mr. Horatio R. Hamilton is to work and, in conformity with the Constitution and the laws, the States and Municipalities will not impose any tax.

ARTICLE EIGHTH.

This contract will remain in force for twenty-five years counting from this date, and during this term the Government will not grant similar concessions for the State of Bermudez.

ARTICLE NINTH.

Horatio R. Hamilton binds himself to begin work in the execution of this contract within the term of six months, extendable to six more, subject to the assent of the Government, counting from the date on which the contract has been approved by the Federal Council in conformity with law, **and failure to comply with any of the stipulations herein expressed will, by that very fact, annul the present contract.**

ARTICLE TENTH.

Horatio R. Hamilton may transfer the rights and obligations derived from this contract to one or more persons, giving due notice thereof to the Federal Executive.

ARTICLE ELEVENTH.

Disputes and controversies which may arise owing to this contract will be decided by the tribunals of the Republic in conformity with its laws.

Duplicates of the same tenor and date have been made to the same effect at Caracas on the fifteenth day of September, 1883.

(Signed) M. CARABALLO.
HORATIO R. HAMILTON.

ADDITIONAL ARTICLE.

According to what is established in the Fifth Article the tax to be paid by Mr. Horatio R. Hamilton for the woods which he may work and export is fixed by the present article as follows:—

For each 999½ kilograms of wood fit for joiner work, five bolivars;
For each 999½ " of dyewoods, three bolivars; and
For each 999½ " of building lumber, two bolivars and 50 centavos.

(Signed) M. CARABALLO.

CARACAS, October 19th, 1883. HORATIO R. HAMILTON.

Given in the Federal Palace by the Legislative Body at Caracas the fifth day of June, 1884. In the twenty-first year of the law and the 26th of the Federation.

The President of the Chamber of the Senate,
(Signed) F. FRANCISCO CASTILLO.
The President of the Chamber of Deputies,
(Signed) JUAN CALCANO MATHIEU.
The Secretary of the Chamber of the Senate,
(Signed) M. CABALLERO.
The Secretary of the Chamber of Deputies,
(Signed) J. NICOMEDES RAMIRES.

Federal Palace in Caracas June 6th, 1884. 21st year of the law and 26th of Federation. Executed and approved of its execution.

(Signed) JOAQUIN CRESPO (L.G.S.)
(Countersigned) JACINTO LARA,
Minister of Fomento.

SECOND ADDITIONAL ARTICLE.

H. R. Hamilton will canalize one or more of the rivers of the State of Bermudez, commencing at the Cano Colorado and Guarapiche, as far as Maturin, for navigating purposes, and to increase the import and export trade with the interior.

The Government gives H. R. Hamilton the exclusive right to navigate the river or rivers he may canalize and the right to collect a tax or toll on all or any boats or vessels that may navigate on said rivers; the amount of tax to be collected to be fixed hereafter with sanction of the Government, said collection to be put in force as soon as any of the said rivers, or part thereof, is made navigable.

H. R. Hamilton can also enforce same tax or toll should he build a railway.

THIRD ADDITIONAL ARTICLE.

It is further conceded to H. R. Hamilton the right to navigate the rivers of the State of Bermudez, including those he may canalize, and from them to one or more of the West India Islands, United States and England in accordance with the fiscal laws of the Republic.

FOURTH ADDITIONAL ARTICLE.

H. R. Hamilton has also the right to cultivate the lands in the State of Bermudez, that he may clear or work upon for the term of this contract, twenty-five years; and the seed, plants or other articles necessary for said cultivation will be admitted free of all duties and imposts whatever.

(Signed) JACINTO LARA,
CARACAS, May 30, 1884. Minister of Fomento (L. S.)
H. R. HAMILTON (L. S.)

It will be seen that the concession was granted September 15, 1883, added to on October 19, 1883, and was approved by the Venezuelan Congress June 5, 1884. The second, third and fourth

additional articles were agreed to May 30, 1884, but were not presented to the Congress then in session. They were, however, ratified and confirmed by the Congress of 1885, when approving the report of the Minister of Fomento for that year.

After obtaining his concession, Hamilton returned to New York and on November 16, 1885, conveyed it to the New York and Bermudez Company, which had been incorporated under the laws of the State of New York, October 24, 1885, for the purpose of acquiring and working the concession. Hamilton received a small sum in cash and a large block of the stock of the newly organized company. This stock he soon afterwards sold or otherwise disposed of as his necessities for money developed.

Some Asphalt History.

[Translation of the assignment of the Hamilton Concession to the New York and Bermudez Company.]

THIS INDENTURE made the sixteenth day of November in the year One thousand eight hundred and eighty-five (1885) between Horatio R. Hamilton, now of the City, County and State of New York, party of the first part, and the New York & Bermudez Company, a corporation duly organized under and pursuant to the Laws of the said State of New York, in the United States of America, party of the second part,

Witnesseth:

Whereas, by a Contract with the National Executive Power of the United States of Venezuela and a Decree of the Congress of the said United States of Venezuela, dated the fifth day of June, 1884, and approved by the President and Secretary of said United States of Venezuela, June 6, 1884, the exclusive concession, right and authority to explore and work the natural productions of the forests which exist on the waste lands of the State of Bermudez, Venezuela, to work the asphaltum in said State of Bermudez, and to navigate the rivers and streams of said State, and other rights and privileges, for the period of twenty-five years from the date of said Decree, was thereby given and granted unto the above named Horatio R. Hamilton, together with the authority to transfer his rights and obligations under said Contract and Decree to one or more persons, upon due notice to the said Federal Executive, a copy of said Contract or Decree, together with the Articles Additional thereto granted said Horatio R. Hamilton by the said United States of Venezuela, translated from the Spanish Language into the English Language (errors of translation excepted), is hereto annexed;

And, whereas, the time within which to begin work in the execution of said Contract was by its terms limited to six months from this date, with the power on the part of the said Government of Venezuela to further extend such period in its judgment;

And, whereas, on the application of the said Horatio R. Hamilton such term has, by the President of the said United States of Venezuela with the consent of the Federal Council, been regularly and duly extended to March 30, Eighteen hundred and eighty-six (1886);

And, whereas, the said New York & Bermudez Company is desirous and has agreed to purchase all the rights, title and interest of the said Horatio R. Hamilton to and under said Contract, Concession and Decree and the Additional Articles thereto, in order to succeed in all the rights, powers, privileges and obligations of the said Horatio R. Hamilton thereunder, pursuant to its terms, and the said Horatio R. Hamilton has agreed for the consideration hereinafter mentioned to assign, transfer and set over to the said New York & Bermudez Company all his rights,

title, interest, privileges and powers in, to and under the said **Contract, Concession or Decree and the Additional Articles thereto;**

Now, therefore, these presents witness, that the above named Horatio R. Hamilton, party of the first part hereto, for and in consideration of the sum of One Dollar, lawful money of the United States of America, to him in hand paid, and for and in the further consideration of Nine thousand (9,000) Shares of the Capital Stock of the said New York & Bermudez Company, the party of the second part hereto, to him in hand paid and delivered at and before the execution hereof by the said New York & Bermudez Company, the receipt whereof is hereby acknowledged, has sold, assigned, transferred, granted, conveyed and set over and by these presents **doth sell, assign, transfer, grant, convey and set over to the said New York & Bermudez Company, its successors and assigns, the above recited Contract, Concession or Decree from the said Government of Venezuela and each and every Additional Article thereto,** and all and singular the rights, title, interest, privileges, property, claims and demands of every kind whatsoever of him, the said Horatio R. Hamilton, of, in and to the same, together with all and singular the rights, powers, privileges and franchises conferred upon, ceded, conceded, granted or decreed to him, the said Horatio R. Hamilton, or his assigns in and by the said Contract, Concession or Decree, and also all the hereditaments and appurtenances thereto in any way **appertaining or belonging and contained in said Contract, Concession, or Decree, or the Additional Articles thereto,** either expressly or by implication, or which are incidental thereto or necessary for the full, free and perfect enjoyment of the same by the said New York & Bermudez Company and in order that the said New York & Bermudez Company, its successors and assigns, may be enabled to transact, promote and carry on all business and enjoy all the rights and privileges and to perform all powers in connection therewith or thereunder, and any and every act connected therewith, hereby expressly giving and granting unto the said New York & Bermudez Company, the party of the second part hereto, its successors and assigns, all and every the rights, powers, privileges and authority of him, the said Horatio R. Hamilton in, to and under the said **Contract, Concession or Decree and the Additional Articles thereto** as fully, completely and perfectly in the premises in every respect and in and about all things and matters in every manner connected therewith as he, the said Horatio R. Hamilton, has had, now has, or may in any manner have or acquire under and by the terms of said **Contract, Concession or Decree and any and all Additional Articles thereto,** which have heretofore or may hereafter be granted, or given him, said Horatio R. Hamilton, at any time for the purpose of extending said Grant, Concession or Decree or to work, use and enjoy the same.

And the said Horatio R. Hamilton doth hereby for himself, his heirs, executors, administrators and assigns, covenant and agree to and with the said New York & Bermudez Company, its successors and assigns, that the said Contract, Concession or Decree is now in full force, power and effect and that there now remains a term of over four months, to wit, until March 30, 1886, in which the said Horatio R. Hamilton or the said New York & Bermudez Company, his assignee hereunder, may take advantage of and work, hold, exercise, use and enjoy the said **Contract, Concession or Decree and the Additional Articles thereto** under the terms thereof and under the terms of the several extensions thereof.

And the said Horatio R. Hamilton for himself and his legal representatives doth hereby further covenant and agree to and with the said New York & Bermudez Company that he, the said Horatio R. Hamilton, is now the sole owner or beneficiary of said **Contract, Concession or Decree and the Additional Articles thereto** and each and every part thereof, and that no other person or persons whatever has or have, at the date of the execution hereof, any interest in or claim to the same or any part thereof.

And the said Horatio R. Hamilton, for himself and his legal representa-

tives, doth hereby further covenant and agree to and with the said New York & Bermudez Company, its successors and assigns, that he, said Horatio R. Hamilton, and his legal representatives shall and will at all times hereafter upon the reasonable request of the said party of the second part, its successors or assigns, make, do and execute or cause to be made, done or executed all and every such other and further reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby granted, or intended so to be, in and to said party of the second part, its successors and assigns, as his or their counsel, learned in the law, shall advise or require.

In witness whereof, the said Horatio R. Hamilton hath hereunto set his hand and seal at the City of New York, in the State of New York, in the United States of America, the day and year first above written.

HORATIO R. HAMILTON.

Signed, sealed and delivered
in the presence of:

L. S. RHOADS.

United States of America,
State of New York,
County of New York,
City of New York.

On this 18th day of November, One thousand eight hundred and eighty-five (1885) before me, the undersigned, came Horatio R. Hamilton, to me personally known and known to me to be the individual described in and who executed the foregoing instrument, and personally acknowledged to me that he had executed the same for the uses and purposes therein set forth.

LEVI S. RHOADS,
Notary Public, Kings County.
Certificate filed in New York County.

This transfer was approved by the Venezuelan Government, December 9th, 1885.

The rest of the stock of the New York and Bermudez Company was held by Messrs. Thomas H. and William H. Thomas, of New York, and their friends, among whom was Mr. A. H. Carner, an engineer of marked ability, who, as Secretary and Managing Director of the Company, took charge of the work of development at Guanoco in the State of Bermudez, and of all other operations in Venezuela. The pioneer work was slow, difficult and hazardous and it was not until 1891 that the first small shipments of asphalt were made. By 1893 the shipping plant had been enlarged and improved so that it was possible to make much larger shipments, and the New York and Bermudez Company was in a fair way to become a prominent factor in the asphalt trade in opposition to The Trinidad Asphalt Company of New Jersey, which up to that time had virtually controlled the business through its ownership of the concession to the Pitch Lake in the island of Trinidad, British West Indies. However, the expense of development had heavily taxed the resources of the Bermudez promoters and the financial crisis of 1893 made it most difficult for them to obtain further capital. Negotiations were opened with The Trinidad Asphalt Company, which resulted in that Company acquiring all of the bonds and substantially all of the stock of the New York

and Bermudez Company. In 1898 The Trinidad Asphalt Company was succeeded by The New Trinidad Lake Asphalt Company, Limited, of London, and this in turn was absorbed in 1899 by the Asphalt Company of America, the first Asphalt Trust. In 1900 The National Asphalt Company absorbed the Asphalt Company of America and on the 28th of December, 1901, both Companies passed into the hands of Receivers because of failure to meet fixed charges on interest bearing obligations outstanding. In May, 1903, the Trust was re-organized under the name of the General Asphalt Company.

For more than twenty years the business had been directed by Mr. A. L. Barber and his associates, but when the National Asphalt Company acquired the stock of the Asphalt Company of America, Mr. John M. Mack of Philadelphia became the controlling power. The plan by which the National Asphalt Company took over the Asphalt Company of America and its subsidiary companies became operative on January 1, 1901. Mr. Barber, who had consented to take the Presidency of the National Asphalt Company, retired as President and Director two days later, January 3, 1901, and about the same time sold all of his asphalt securities.

After Mr. Barber's retirement, General Francis V. Greene became President of the Trust, Mr. Mack was the Vice-President, Mr. A. W. Sewall, Secretary and Treasurer, and General Avery D. Andrews, Second Vice-President and General Counsel. At the present time Mr. Mack is President and Messrs. Sewall and Andrews are the Vice-Presidents of the re-organized Trust, the General Asphalt Company.

"La Felicidad."

On January 28, 1897, General Crespo being then President, four Venezuelans "denounced" a claim in the State of Bermudez, to which they gave the name "La Felicidad" and later (November 30, 1897) succeeded in getting issued to them a definite title to property which was claimed to be a part of the asphalt deposit then operated by the New York and Bermudez Company. Litigation promptly followed with varying success in the local courts and continued until January 28, 1904. During the litigation the Felicidad title was purchased (May, 1900) in the interest of Messrs. Charles M. Warner and P. R. Quinlan, of Syracuse, New York, for $40,000, the vendors taking particular pains to specify in the deed of transfer that they made the sale at the risk of the purchasers and without any responsibility. Other provisional titles of a similar character called "La Venezuela," "Southside," etc., were issued but no serious attempts were made to establish their validity.

During the litigation over "La Felicidad," Crespo had been succeeded in the Presidency by Andrade and the latter had given way to Castro's superior strength and ability. It is unnecessary

to follow in detail the litigation, the intrigues, the moves and counter-moves of Warner and Quinlan to secure, and of the Asphalt Trust's efforts to retain, possession of this portion of the Bermudez asphalt deposit. Each party spent money lavishly and resorted to every device and trick to gain its ends. The legal fraternity of Venezuela probably never before had had such a rich plum tree to shake.

The following incident, which will serve to illustrate the nature of the methods adopted, was currently reported at the time. It appears that an important point in the litigation was about to be decided by the Court at Cumana, composed of three judges. The New York and Bermudez Company's Manager, who had his headquarters at Trinidad, appeared in the harbor on the Company's steamer "Viking" the day before the decision was to be rendered, with $10,000 in gold on board. Arrangements were made with two of the judges for a decision favorable to the New York and Bermudez Company. The third judge learned what was on foot and telegraphed the information to Caracas. The next morning the President of the State received imperative orders from Caracas to dismiss the entire Court. **This act has since been cited by the counsel for the Asphalt Trust before the State Department at Washington as an example of Castro's high-handed methods and of his control over the Courts of Venezuela.** The story is vouched for by reliable persons fully cognizant of the facts.

On account of Castro's decisive action in suppressing a court that could be bribed and for other reasons, the Trust came to the conclusion that Castro was hostile to its interests.

It is impossible to say what Castro's attitude really was during the "Felicidad" litigation or if he took any particular interest in it, but when the case finally reached the High Federal Court in Caracas on the main issues and after a long and voluminous trial, **the ten judges composing the Court rendered an unanimous decision, on January 28, 1904, favorable to the New York and Bermudez Company,** which brought forth from the Company's Managing Director, Captain Robert K. Wright, the following message to President Castro:

[Translation.]

"National Telegraph.
Caracas, January 28, 1904.
One o'clock p. m.
Sr. General Castro:—
The representative of the New York and Bermudez Company respectfully congratulates you on the triumph of justice. He begs an audience to-morrow morning to salute you personally.
(Signed) Robert K. Wright,
(Managing Director.)"

The full text of the decision in the "Felicidad" case follows:

[Translation.]

Decision of the High Federal Court,
January 28, 1904.

PATRICK R. QUINLAN AND CHARLES M. WARNER
Versus
THE NEW YORK & BERMUDEZ COMPANY.

UNITED STATES OF VENEZUELA—IN THEIR NAME—THE HALL OF SOLE INSTANCE OF THE FEDERAL COURT.

The Court has viewed the proceedings, has heard the oral addresses and seen the written conclusions of the parties.

On the 16th of February, 1901, Drs. Jose de Jesus Paul and Nicomedes Zuloaga, lawyers, the constituted attorneys of Patrick R. Quinlan and his tenant in common, Charles M. Warner, residents of Syracuse, State of New York, in the United States of North America, brought an action against the New York & Bermudez Co., to compel it to admit the validity of the title of an asphalt mine called "Felicidad," the property of their constituents, and in case the defendant company should not admit this, that the Federal Court should declare the validity of the said title, in conformity with its legal attributions and as a final judgment in the suit which they were instituting.

The Plaintiffs based their action on the following grounds:

1. That the said mine, the property of Quinlan and Warner, is situated in the Parish of Union, District of Benitez, in the State of Bermudez, to the east of the place called Usirina, in the Gulf of Paria, is bounded on all sides by wild lands and consists of two hundred and eighty-three hectares (283 h) which were granted to Messrs. Antonio Bianchi, Antonio Cervoni, Jose Francisco Micheli and Mateo Guerra Marcano, on the 30th of November, 1897. 2. That the said mine was held by Messrs. Quinlan and Warner under conveyance thereof made to them by the original owners, of which conveyance the Minister of Fomento was notified. 3. That Messrs. Warner and Quinlan proposed to work the said mine, but that the New York and Bermudez Company pretends that the title of the "Felicidad" is not valid, alleging that the said mine is comprised within another mining concession, granted to it in the name of its secretary, Ambrose H. Carner, in the year 1888, and that by virtue of a contract made by the National Government with Horatio R. Hamilton in the year 1883, of which the New York & Bermudez Company is assignee, the National Government could not grant the mining concession "Felicidad."

The Plaintiffs annexed to the demand certified copies of the title of mines, which the New York & Bermudez Company had obtained; and also of the title and plan of the wild lands which were granted to it for the working of its mine, which documents were marked with the letters C, D and E; and they also annexed the title and plan of the mine "Felicidad" and also a superposition or transfer of the plan of the mine of the New York and Bermudez Co. to the plan of the mine "Felicidad," marked with the letter F. They also annexed No. 8,105 of the "Official Gazette," in which the governmental resolution of the 10th of December, 1900, appears, which contains the interpretation that the National Government gives to the Hamilton contract, with regard to the extent of his concessions, and likewise added two certified copies, marked with the letters G and H, of the petition and protest of the Director of the New York & Bermudez Company relative to its pretensions which occasion the action.

Cognizance having been taken of the action at the political sitting (folio 19) it was ordered that it should go before the Hall of First and Sole Instance who, in turn, sent the matter on to the Judge of Substantiation, who is the President of this Court.

On the 16th of March, 1901, Drs. Zuloaga and Paul amended their action at the place where it says: "alleging that the mine 'Felicidad' is comprised within another mining concession, granted to the said New York & Bermudez Company in the name of its secretary A. Howard Carner in the year 1888" by saying "alleging that the mine 'Felicidad' is comprised within another mining concession granted to Howard Carner, secretary of the New York and Bermudez Company, in 1888, and transferred by the said A. Howard Carner and his wife, Ida E. Carner, to the said Company by a document recorded at Caracas under No. 32, at folio 33 of the 1st protocol, volume 2, for the 4th quarter of 1893, as appears from the certified copy which they annexed.

On the 18th of March, 1901, the President of the Federal Court, as Judge of Substantiation, ordered that the New York & Bermudez Company should be summoned and should appear to answer the action brought against it, and on endeavoring to effect service of the summons, it appearing that the defendant Company was absent from the Republic, the said Judge of Substantiation, at the request of the plaintiff lawyers, ordered Mr. Henry Willard Bean to be summoned, as the constituted attorney of the New York & Bermudez Company, and at the hearing of the 28th of March, 1901, at the appointed hour, Mr. Bean appeared, and stated that he was the constituted attorney of the New York & Bermudez Company and that he appointed as his substitutes Drs. Jose Loreto Arismendi and Carlos Leon to represent the Company in this suit, and it was therefore ordered that the said Company should be summoned anew in the persons of the said Drs. Arismendi and Leon, who on the 17th of April, 1901, appeared and took the dilatory exceptions that the Court was incompetent, that the plaintiffs' constituted attorneys were illegally appointed as their powers were wanting in the requisite formalities and were therefore null, and the exception that the necessary security had not been given to enable them to proceed to judgment.

On the 18th of April, 1901, the plaintiffs' lawyers, in writing, contradicted in their entirety the exceptions taken and the defendant's representatives having moved that evidence should be taken on the exceptions within the legal period, the plaintiffs opposed the motion on the ground that the exceptions taken were merely matters of law. By minute of the 23rd of April, 1901, the Court of Substantiation decided that the point was not one of mere law and therefore declared the issue open to evidence during the legal period.

By judgment of the 25th of May, 1901, the Court of Substantiation decided the issue, disallowing the exceptions that the Court was incompetent, and that the plaintiffs' attorneys were illegally appointed, but allowing the exception for want of the necessary security in order to proceed to judgment, and fixed the amount of the security in one hundred thousand bolivars.

By instrument in writing dated the 28th of May, 1901, which appeared at folio 140 of the first part of the proceedings, the defendant's constituted attorneys alleged that the President of the Court had not power to decide, himself alone, the exceptions taken, and for that reason and reserving the right to appeal from his decision of the 25th of May, in so far as it disallows the exception of illegality in the appointment of the plaintiffs' constituted attorneys, they asked the Substantiating Judge to revoke that decision, thereby restoring the proceedings to a condition for beginning the hearing before the full Court, or revising the judgment radically, to declare that the Federal Court had no jurisdiction whatsoever to take cognizance of the action instituted against the New York & Bermudez Company. This pretension of the defendants was disallowed by the Substantiating Judge, by minute of the 31st of May, 1901 (folios 145 to 147, first part). This decision having been appealed against by Dr. Carlos Leon (folio 148, first part), one of the constituted attorneys of the defendant, the appeal was heard, the proceedings being suspended, not only with respect to the essence of the motion mentioned but also with respect to the exception of illegality in the appointment of the plaintiffs' constituted attorneys (reverse side of folio 2 and folio 3, 2d part),

The proceedings having been sent to the Hall of Sole Instance of the Federal Court, the Vice-President appointed for considering the appeal the sitting

of the fourth day after receiving it, and the hearing having begun on the 18th of June, 1901 (reverse side of folio 5, 2d part), Dr. Jose Loreto Arismendi, one of the lawyers of the defendant, appeared, and by an affidavit which he filed with the proceedings, dated the 25th day of June, 1901 (reverse side of folio 9, 2d part), set out textually "that Mr. Emilio J. Maury, as appears by the Official Gazette, is the concessionary of various asphalt mines situated in the jurisdiction of the former State of Bermudez; **that the New York & Bermudez Company contends that all the titles which the National Government has granted for asphalt mines in that region of the Republic are void, having been issued in contravention of the Hamilton contract of which the said Company is the assignee**; and that inasmuch as General Jacinto R. Pachano, one of the judges in the cause, was Mr. Maury's father-in-law, he therefore objected to him. By minute of the 26th of June, 1901 (folio 11, 2d part), the Hall declared the objection to General Pachano inadmissible, it having been taken after the time allowed by law.

On the 19th of July, 1901, as appears from the manifestation made to the Court by Dr. Henry Willard Bean (obverse and reverse sides of folio 23, 2d part), as the general constituted attorney of the New York & Bermudez Company, Drs. Manuel Clemente Urbaneja, and Claudio Bruzual Serra, entered upon the representation and defence of the said Company and on the 7th of August, 1901, objected in writing (folios 34 to reverse side of folio 37, 2d part), relying on the reasons therein set forth, to all the members of the Court, who by judgment of the 14th of August, 1901 (folios 41 to reverse side of 50, 2d part), declared the said objection inadmissible and at the same time confirmed in their entirety the decisions appealed against, that is to say, the decisions passed by the President of the Court on the exceptions taken by the lawyers of the New York & Bermudez Company. As the final result of all the objections which have been enumerated those only were allowed which referred to the giving of the security demanded by the lawyers of the defendant and decreed and fixed by the Judge of Substantiation, which was at last arranged and given for the sum of one hundred thousand bolivars (B. 100,000), by Mr. Pedro Salas, a resident of this city.

The first, and what may be called a very laborious stage of this suit having been thus concluded, Dr. Manuel Clemente Urbaneja, one of the new constituted attorneys of the defendant, proceeded to answer the merits of the action; this took place on the 27th of September, 1901 (folios 75 to 79, 2d part). As essential points of that answer the defendant contradicted the action in all its parts on the ground that the action brought against it is contrary to law, as no obligation existed between the parties. It qualified the title of the mine Felicidad as inefficacious as it suffers from defects which rendered it completely null. It alleged that such mine Felicidad is in fact nothing but a part or portion of the asphalt lake which the New York & Bermudez Company has legally possessed and exploited during the past fourteen years, alleging to the effect that in the parish of Union, in the District of Benitez, in the State of Sucre, there is no other known asphalt mine, except the asphalt lake which the Bermudez is exploiting; pleaded limitation in support of the title of the Bermudez; raised as peremptory exceptions the incompetence of the Federal Court to intervene in this suit; and that the promoters of the action were the wrong persons to bring it, Charles Warner and Patrick R. Quinlan being distinct persons from the firm "Warner Quinlan Asphalt Co.," a company constituted by the promoters of the action for the purpose of exploring and exploiting asphalt mines in Venezuela, as a consequence of what they themselves declare in the power of attorney which they executed to Mr. Patrick Sullivan and which the latter transferred by way of substitution to the plaintiff lawyers, Zuloaga and Paul; and finally the defendants asked in their written answer for extra time for putting in their evidence, in order to obtain the testimony of Count Orsi de Mombello, resident of Turin, in the Kingdom of Italy; for the purpose of proving the affirmative interrogatories which they would put to Messrs. Warner & Quinlan, residents of Syracuse, State of New York, United States of America; and for the testimony of Mr.

Ambrose H. Carner, resident of Kissingen, Bavaria, Germany. Dr. Urbaneja put in together with his answer written testimony taken before the parish Judge, in order to prove the residence in Turin of Mr. Orsi de Mombello. The answer being terminated the Substantiating Judge advised the parties to come to an amicable arrangement, and as this did not take place, he declared the hearing terminated, and reserved his decision with respect to the request for extra time to put in evidence made by the defendants until after the evidence should have been called for (reverse side of folio 82 to reverse side of folio 83, 2d part).

When the cause was ripe for the taking of evidence both parties put in, in due time, all that they believed expedient for the defence and proof of their respective rights, the extra time having been granted which had been requested for that which had to be taken outside of the territory of the Republic, for which purpose the proper warrants, letters requisitional, and requests were issued as well as for that which had to be taken outside of this capital, in other districts of the Republic, as for that which had to be taken in various foreign countries. As evidence to be taken abroad the plaintiffs requested that Dr. Jesus Munoz Tebar, engineer of the Republic, who was in Puerto Rico, should make his declaration regarding the particulars of the interrogatory which they put in, and that B. S. Osborn, Captain of the Mercantile Navy of the United States, should make his declarations in New York, where he was residing; and the defendant asked that Colonel Jose Orsi de Mombello should make his declaration at Turin, Kingdom of Italy; that Mr. Ambrose H. Carner should make his declaration in Germany and that the plaintiffs, Charles M. Warner and Patrick R. Quinlan, should answer in New York the interrogatories addressed to them; all which requisitions for evidence were duly complied with, with the exception of the testimony of Mr. Ambrose H. Carner, which was abandoned by the party requesting the same.

The evidence having been taken, and the expert work and occular inspections asked for having been done and made, and the motions with regard to inadmissibility of witnesses and other motions which were made in the course of the time allowed for putting in the evidence having been resolved and decided, and the defendant having abandoned the testimony of seventy-six of the eighty-six witnesses who, according to the instrument in writing in which he enumerated his proofs, dated the 10th of October, 1901, should have declared in various parts of the State of Sucre, in the former State of Bermudez, the taking of evidence in the cause was terminated, and thereupon Dr. Juan Bautista Bance, who from the 24th of September, 1901, had entered upon the representation of the New York & Bermudez Company (reverse side of folio 89, 2d part), by writing of the 19th of June, 1902 (folio 352, reverse side, 4th part), requested the Court to send on the proceedings to the full Hall in order that the statement of the case should begin in accordance with the law; and consequently, the proceedings having gone on to the Full Hall, the President by order of the 26th of June, 1902, (folio 353, reverse side, 4th part), fixed for hearing the cause the session of the eighth office day. At this stage one of the judges, Dr. Antonio Maria Planchart, withdrew himself by writing of the 27th of June, 1902 (folio 354, 4th part), from taking cognizance of the cause, on account of his having expressed his opinion. The withdrawal having been allowed by order of the 2d of July, 1902 (folio 355, 4th part), and a ballot having been effected for ascertaining who should replace him, Dr. Jose Santiago Rodriguez proved to be elected, but did not accept (reverse side of folio 355 to folio 357, 4th part) and a new ballot having been taken Dr. Carlos Jimenez Rebolledo was elected and he accepted the charge (folio 359, and reverse side 4th part).

The Hall having been thus completed the statement of the cause began on the 11th of August, 1902 (folio 359, reverse side, 4th part), and terminated on the 23rd of December, 1903, and as a legal vacation ought to begin the next day, the 24th of December, until the 6th of January of the present year, 1904, the third sitting after the termination of the vacation was fixed for the final addresses of the parties. It is expedient to remark that if the statement of this

case has been prolonged for so great a time it was due less to the voluminousness of the proceedings than to the interruptions which have taken place owing to the death or resignation of some members of the Court, which by giving occasion to the entry of new judges made it necessary to retrace the statement which was already begun. That delay was further lengthened in part by the legal vacations which came on, and the objection raised by Dr. Nicomedes Zuloaga, the constituted lawyer of Warner & Quinlan, against Dr. Guillermo Tell Villegas Pulido, who had come to occupy the post of President which became vacant by the death of General Jacinto R. Pachano, which took place on the 17th of July, 1903.

Towards the end of November, 1903, and when the statement of this case was drawing to a close, the member, Dr. Guillermo Tell Villegas Pulido, separated himself from the Court by resignation, and this circumstance gave rise to a new interruption which continued until the Hall was completed by the entrance of the co-Judge, Dr. Eduardo Perez Benitez, when the view was fixed anew by order of the 4th of December, 1903.

In the course of the suit, and up to the final addresses, the parties have produced and put in as means of proving their respective contentions, as each side understands the matter, the following documents:—1. Plan of the asphalt lake and lands, the property of the New York & Bermudez Co. made by the engineer J. Orsi de Mombello, dated at Barcelona the 23d of October, 1888; 2. Plan of the asphalt mine called Felicidad, made by Pedro Vincente Felce, Public land surveyor, dated at Guariquen the 12th of September, 1897; 3. Plan of the asphalt mine "Venezuela" made by Hereiberto Imery, Public land surveyor, dated at Carupano, the 17th of October, 1900; 4. Plan of the mining concessions New York & Bermudez Company and the "Felicidad," and denunciation of the "Venezuela" made by the engineer and Technical Inspector of Mines of the Republic, Dr. Tomás C. Llamozas, dated at Caracas, the 22d of August, 1900; 5. Plan of the mining concession "New York & Bermudez Company" and the "Felicidad," made by Dr. German Jimenez, engineer, dated at Caracas the 5th of November, 1900. Dr. Jimenez was one of the members who, as representative of the Bermudez, formed part of the commission of three engineers whom the Government by Executive resolution, dated the 16th of September, resolved to send to the site of the mines in dispute in order to fix their respective situations; 6. Plans of the asphalt mines situated to the southeast of the village of Guariquen made by Dr. Jesus Munoz Tebar, engineer, who proceeded as a member of the commission already named and as a representative of the "Felicidad." The correctness of the plans of Drs. Jimenez and Munoz Tebar is certified by Dr. Luis Julio Blanco, engineer, who as the representative of the Government, formed part of the said commission; 7. Plan which is a superimposition of those made by Drs. Llamozas, Jimenez, Munoz Tebar and Land Surveyor Felce.

As all the most notable details of this suit have been enumerated in the most minute manner, since many of them are only simple details which do not affect the merits of the case, this High Court now enters upon the state of investigation and deductions which should naturally concur, together with the circumstances and data of the proceedings in the formation of that legal criterion, which should prevail in definitely solving this controversy, and it is to be observed that in order to proceed with the greatest certainty possible in the endeavor to arrive at the end indicated, it is necessary, in the present case, to take into account all the antecedents and judicial facts, which are more or less intimately related, directly and indirectly, with the contentions which are being discussed.

At the head of those judicial facts which can be considered classic and primordial, for its importance in this suit, stands the contract entered into between the National Government of the United States of Venezuela and Mr. Horatio R. Hamilton, on the 15th day of September, 1883, augmented by an article on the 19th of October of said year, and further augmented by three articles on the 30th of May, 1884, and approved by the National Congress by a law passed on the 6th of June of the said year 1884. Afterwards Mr. Hamilton, in exer-

cise of the power granted to him by article 10 of the said contract, transferred and granted the same to the corporation or company "New York & Bermudez Company" which, on becoming the assignee of the said contract, became thereby substituted in all the rights and obligations acquired and contracted by the grantor. **This contract therefore became and continues to be the sole primitive and principal source from which emanated, so to say, the exclusive right for the assignee company to explore, exploit and export all the natural products of the forests existing in unreclaimed lands of the former State of Bermudez, in the terms of article 1 of the contract, and in the identical way, it acquired, in the tenor of article 2, the right to exploit the asphalt in all the territory of the State, but only for the term of twenty-five years fixed by article 8 of the contract in question, and without the National Government being able, within the lapse of that time, to grant like concessions as regards the State of Bermudez to any other person.** The idea has been thrown out that the Hamilton contract only granted to the contractor, or those claiming under him, a simple right of preference in the discoveries which they should make of mines or other products on the lands comprised in the contract. Such an interpretation cannot be rationally sustained, because in whatever way things are considered in the case before us, the result will always be that the Hamilton contract is clothed with all the forms and engenders all the consequences of a privilege granted to the contractor and to his assigns in order that they alone, during the prescribed time, might be able to exploit the asphalt and other natural products which should be found in the territory covered by the contract, exception being made of the old section of Barcelona so far as regards the exploitation of woods. And the contract is in full force, since even although the National Government by and of itself, by resolution of the Ministry of Fomento, dated the 4th of January, 1898, declared its termination, owing to the cessionary company not having executed the obligations which it had contracted to perform, the said resolution, on the petition of Dr. Carlos Leon, the constituted attorney of the New York & Bermudez Company, was declared null and void, as an act of usurped authority, by the then Federal High Court, by its decision of the 23d of August, 1898, and consequently the Hamilton contract retained all its legal effect. It must be observed that this resolution of the Ministry of Fomento was preceded by a petition, which Dr. Arturo Ayala, acting as constituted attorney of Messrs. Mateo Guerra Marcano, Antonio Bianchi, José Francisco Micheli and Antonio Cervoni, the original cessionaries of the "Felicidad" mine, addressed to the Ministry of Fomento, under date the 3d of January, 1898, praying that the Hamilton contract should be declared terminated because neither the contractor nor his assigns had complied with the obligation which, among others, he had entered into of canalizing one or more rivers of the State of Bermudez, commencing at the Caño Colorado and Guarapiche. The like proceeding on the part of the constituted attorney of the original cessionaries of the mine "Felicidad" clearly demonstrated that the latter considered the existence of the Hamilton contract as an insuperable obstacle to the legitimate and perfect acquirement and the peaceful exploitation of their mining concessions and likewise also of any other concession which might have been or might be granted them in contravention of the stipulations of the Hamilton contract.

On the 17th of July, 1900, as appears from the Official Gazette, No. 8,105, put in evidence by the constituted attorneys of the "Felicidad," Mr. Ambrose H. Carner, acting as Director of the New York & Bermudez Company, had recourse to the Ministry of Fomento asking that the definitive title of the mine "Felicidad," granted by the National Government on the 30th of November, 1897, should be declared null and also raising objection to the granting of the definitive title of another asphalt mine called "Venezuela." The New York & Bermudez Company alleged, as the ground for its petition, that both mines were situated within the limits of the mining concession and the belt of land of which it was the owner, by virtue of a title granted on the 7th and 14th of December, 1888, and alleged in the same way that the contract made by the

National Government with Mr. Hamilton, of which contract the company is assignee, conceded to it the exclusive right to exploit asphalt in the old State of Bermudez.

By resolution of the 18th of December the Minister of Fomento refused the petition of the New York & Bermudez Co., adducing therefor, among other reasons:

1. That the contract made by the National Government with Mr. Horatio R. Hamilton does not concede to the cessionary company the exclusive right to exploit the asphalt existing in the old State of Bermudez, because no such monopoly was stipulated in the contract, and monopolies cannot be presumed;

2. That according to the plans made by the commission of engineers whom the Government resolved to send to the site, the situation of the mine in question was distinct, inasmuch as there was a difference in their respective distances from the village of Guariquen;

3. That even in the case there were perfect agreement between the real situation of the asphalt lake which the Bermudez exploits, and the title granted in its favor, it could nevertheless raise no objection to the rights of third parties because no boundaries were set out in the title deed; and

4. That in order that the Hamilton contract should confer the monopoly for the exploitation of asphalt, in the old State of Bermudez, it would have been necessary to previously repeal the law of mines then in force.

It has been desired to attach great importance to this resolution of the Ministry of Fomento for the purposes of this suit, the fact being that it is only a simple administrative decision of equal value with the Resolution of the same Ministry, dated the 4th of January, 1898, which sought to declare the termination of the Hamilton contract, and this is so, because even admitting that the said contract collided with the National Constitution and the Law of Mines, or that it ought to be rescinded on account of the contractor and those claiming under him not having fulfilled their obligations, such circumstances in no way alter the nature or the judicial effects of the contract inasmuch as that collision or that recision are not legally declared by the competent authority. It is therefore understood that the New York & Bermudez Co. has had perfect right to say, whether in their petition to the Ministry of Fomento, dated the 17th of July, 1900, or in the written objection taken by Dr. José Loreto Arismendi against General Jacinto R. Pachano, or in various parts of the proceedings, and even in the last verbal addresses of its defence, that in accordance with the terms of the Hamilton contract, of which it is cessionary, the National Government had no power to grant titles to mines in the old State of Bermudez to any other person or corporation in contravention of the terms of the contract.

In consideration whereof,

1. And whereas, by virtue of article 2 of the contract made by the National Government with Horatio R. Hamilton, on the 15th of September, 1883, of which the New York & Bermudez Company is cessionary, the said company acquired the exclusive right to exploit the asphalt existing throughout the old State of Bermudez;

2. And whereas the New York & Bermudez Co. has the right to continue the exploitation until the expiration of the term of twenty-five years fixed by article 8 of the contract of which it is cessionary;

3. And whereas in accordance with the expressed tenor of said article 8 already mentioned, the National Government could not give the title of the mine "Felicidad," nor grant, in the old State of Bermudez, mining concessions of asphalt to any other person or corporation in contravention of the terms of the contract;

4. And whereas the Hamilton contract having acquired the character of a law of the Republic by receiving the approval of the National Congress, that contract created for twenty-five years a special situation for the exploitation of the asphalt and other natural products existing in the old State of Bermudez, or in other words, the New York & Bermudez Company alone had the right to make that exploitation in a general manner in the terms of the contract and during the time prescribed;

5. And whereas the title of the mine "Felicidad" was granted on the 30th of November, 1897, and thirty-four days thereafter, that is to say, on the 3d of January, 1898, the original concessionaries of the said mine, Cervoni, Bianchi, Micheli and Guerra Marcano, had recourse through their constituted attorney to the Minister of Fomento praying that the Hamilton contract should be declared terminated, a circumstance which, as already hinted, showed that the said concessionaries felt the assurance that the existence and validity of the mine "Felicidad" could not be maintained while the stipulations of the Hamilton contract, of which the New York & Bermudez Co. is cessionary, were in force, and in this way making the fact explainable that the concessionaries Bianchi, Cervoni, Micheli and Guerra Marcano, on transferring and selling the mine "Felicidad" to Messrs. Warner & Quinlan, declared in the deed of sale, which has been put in evidence, that they made the sale at the risk of the purchasers and without any responsibility;

6. And whereas with respect to the exception of incompetency of the Court taken as a peremptory exception by the constituted attorneys of the defendants, in their answer to the action, this Hall holds the same opinion which led it to confirm the decision appealed against by the Substantiating Judge who disallowed the same when it was raised as a dilatory exception;

7. And whereas as to the exception, also taken as peremptory by the defendants, that the plaintiffs Warner & Quinlan were not the persons who should have sued, as they must be considered distinct persons from the Company "Warner-Quinlan Asphalt Co.," this Court is of the opinion that there is no object in deciding thereon after the reasons which have just been set forth;

8. **And whereas the question of investigating whether, according to the testimony of the witnesses and the documents of title and the plans put in, the mine "Felicidad" and the asphalt lake which the Bermudez is exploiting are two distinct things or whether one is part of the other, has no essential importance, since whatever be the situation, what has just been said remains intact, namely, that in the territory of the old State of Bermudez no mining concessions of asphalt can be given while the right remains in force for the general exploitation of asphalt which, in that territory, belongs to the New York & Bermudez Co., under the Hamilton contract;**

9. And whereas, in addition to the grounds expressed, the title of the Felicidad suffers from defects which vitiate it, and which are recorded in the proceedings, owing to the requisite prescriptions and solemnities not having been complied with, under pain of nullity, provided by the Code of Mines, defects which, pursuant to article 1279 of the Civil Code, which says:—'The defects of an act which is absolutely void for want of solemnities cannot be made to disappear by any confirmatory act except those solemnities are observed,' cannot be amended;

For the reasons expressed, administering judgment in the name of the United States of Venezuela, and by the authority of the law, this action is dismissed, without any special order as to costs.

Given at the office of the Hall of Sole Instance of the Federal Court, at the Capitol in Caracas, this twenty-eighth day of the month of January, one thousand nine hundred and four. Year 93 of the Independence and 45 of the Federation.

President, MANUEL M. ITURBE.
Vice-President, P. HERMOSO TELLERIA.
Reader, ANTONIO ZARRAGA.
Chancellor, E. GOMEZ R.
Member, E. GONZALEZ HERRERA.
Member, S. TERRERO ATIENZA.
Member, L. PEREZ BUSTAMENTE.
Member, E. BALZA DAVILA.
Member, P. MATA ILLAS.
Co-Judge, EDUARDO PEREZ BENITEZ.
Secretary, RAIMUNDO I. ANDUEZA.

This unanimous decision of the highest Court was joyously received by the New York and Bermudez Company (*vide* Captain Wright's telegram, page 10), although it completely destroyed their claim that justice could not be had in the Courts of Venezuela.

The Matos Rebellion.

When Warner and Quinlan began their action against the Trust in February, 1901, Secretary of State Hay had refused to interfere in judicial proceedings pending in Venezuela (see page 22). A few months later the management of the Trust, having failed to secure international intervention in its behalf and not anticipating the favorable outcome of the "Felicidad" suit, realized three years later, conceived the idea of overthrowing General Castro and his Government. The scheme, if successful, would have been of incalculable benefit to the Trust, because it would not only have settled the Felicidad dispute with Warner and Quinlan (which was then pending in the Courts of Venezuela), but would have given the Trust such a powerful influence in governmental affairs, that many other opportunities to realize enormous profits from public contracts and the development of the natural resources of the country would have been within its grasp. The fact that the Trust held a valuable concession from the Venezuelan Government and that an effort to upset the Government was an act of treason did not bother the Trust officials. Success of the movement would be ample justification and the prize was evidently considered worth the risk.

The complicity of the Asphalt Trust in the Matos rebellion cannot be questioned. Former and present officers of the Trust have acknowledged the truth of the charge in sworn testimony taken before Commissioners in the United States, in the Summer and Fall of 1905, under Letters Rogatory issuing out of the Venezuelan Courts, in an action, brought against the New York and Bermudez Company by the Attorney General of Venezuela, to recover damages sustained by the Government during the Matos rebellion, which action has recently been decided adversely to the Company.

From the evidence in this suit it appears that a representative of the Company went from New York early in June, 1901, to look over the situation at Caracas, both from a business and a political standpoint. This representative on the witness stand denied the political interest of his visit, but according to the evidence of two other witnesses, he had boasted of his part in the events preliminary to the revolutionary movement, and had claimed that when he arrived in Caracas about June 10, 1901, he found the then Managing Director, a New York lawyer named Henry Willard Bean, in active negotiations with the revolutionary party. So reckless was Bean, in openly receiving at his house visits from the leaders of the conspiracy, that the New York representative was obliged

to admonish him for his want of caution. Bean, who is no longer in its employ, was not called by the defendant Company to contradict this testimony. After looking over the field, the special agent returned to New York and made his report to the officers of the Company.

Some of the evidence showing the Company's complicity in the Matos rebellion is herewith reproduced, as follows:

M. M. Schweizer, who was Bean's stenographer from May, 1901, until the middle of July, 1901, testified as follows:

Testimony.

In the year 1901 I was in the employ of the New York and Bermudez Company and on or about the 4th day of May in that year I was sent to Caracas, where I was employed as secretary to Henry Willard Bean, who was at that time the Managing Director for the New York and Bermudez Company in Caracas, Venezuela. I remained in Caracas as Bean's secretary until about the middle of the month of July, 1901, when I was recalled to New York.

Frequently during my stay in Caracas I saw among the visitors at the house of said Bean a number of men who were known to me as friends and adherents of Manuel A. Matos. * * * * *

I returned to New York on the Steamship "Maracaibo," of the Red D. Steamship Company, and arrived in New York about seven o'clock in the evening on the 22nd day of July, 1901. The aforesaid Manuel A. Matos was a passenger on the same steamer and bore letters and dispatches from Bean to the officers of the Company in New York which Bean was unwilling to entrust to my care. Matos told me he had the letters.

About noon on the following day, that is to say on July 23, 1901, I again met the said Manuel A. Matos in the office of the New York and Bermudez Company at No. 11 Broadway, in the said City of New York, and shook hands with him. Matos said that he was on his way to the office of Avery D. Andrews to present his letters, and after a brief conversation Matos entered the office occupied by Andrews. * * * * *

It was generally understood among the employees of the Company in the New York office in 1901 and 1902 that the New York and Bermudez Company was giving material assistance to the revolution in Venezuela known as the Matos rebellion. * * * * * "

(Redirect examination.)

Q. Mr. Schweizer, you came away from Caracas on the same boat that General Matos did? A. Yes, sir.

Q. And did you have conversations with Matos? A. I did.

Q. Had you seen him in Caracas before that time? A. Yes, sir.

Q. Where had you seen him? A. I had seen him in the house of Mr. Bean, the Managing Director, which was also the office of the New York and Bermudez Company.

Q. Had you seen him at any social affairs there? A. There was a dinner given in his honor on the 5th of July.

Q. Was the Bermudez Company's agent or representative present at that dinner? A. He was.

Q. Do you know who the host was of the dinner? A. Mr. Bean.

Q. He was the Company's Agent there? A. He was.

* * * * * * * * *

Q. Did Matos tell you on the steamer or at any time that he had the letters of introduction? A. He told me he had letters of introduction to General Andrews.

* * * * * * * * *

Q. After Matos came to New York did you see him down at the building where the asphalt companies had their offices? A. I saw him in the office.

No evidence was introduced by the defendant Company in contradiction of Schweizer's testimony.

General Francis V. Greene gave the following testimony on October 17, 1905:

Q. 16. State whether when the witness returned from Europe in 1901, he knew that John M. Mack, Avery D. Andrews and Arthur W. Sewall, or any of them, as representatives of the National Asphalt Company, or of any of the companies allied therewith, were in communication with said Manuel A. Matos or were aiding him with money or in any other manner?

A. My only knowledge of this matter comes from what was told to me by Messrs. Mack, Sewall and Andrews. **When I returned from Europe in October, 1901, I was surprised to learn from them that during my absence they had decided to support Matos in his contest with Castro.** I told them that I thought they had made a great mistake, because what they had done was not acting in good faith with the State Department at Washington, which, up to that time and largely on representations made by me to Secretary Hay, had supported the Bermudez Company to such an extent as to enable it to continue in possession of its property. I told them that in view of what they had done during my absence it would be impossible for me to make any further claims at the State Department in Washington in behalf of the Bermudez Company; and in fact I never did after that date go to the State Department on behalf of the Asphalt Company. **I also told them that I thought it was a great mistake because it would cost the Company an enormous sum of money in addition to the amount which they told me they had already expended, which, as I recollect, was somewhere in the neighborhood of $100,000, and that the Company was not in a position to spend such large sums of money, nor would it accomplish any good result, for, in my opinion, Matos could not succeed and it would ultimately be known that the Company had aided him and this would weaken its position before the Venezuelan Government.** I told them that my own judgment was that the proper policy for the Company to pursue was to continue to rely upon the support of the State Department at Washington. This, however, they said was impossible for **they had already made arrangements to support Matos and if he should succeed, as they thought he would, the Company would then be able to protect its interests in Venezuela.** In view of my position in the matter, very little was told to me of what was actually done in supporting Matos. The business was transacted under the direction of the officers above named and largely without my knowledge—certainly without my knowledge as to details. While I was the President of the National Asphalt Company, Mr. Mack and his friends controlled a large majority of the stock and he was Vice-President of the Company and was at that time virtually in control of it. The Company passed into the hands of a receiver about two months later and after that time I had practically no voice in the management of the Company. My connection with it terminated a few months later and for considerably more than three years I have had no connection with the Asphalt Company of any kind whatever.

Up to the time of General Greene's testimony the Company had denied having had any connection with the Matos rebellion, but two days later the Vice-President of the Company, General Avery D. Andrews, took the stand and testified as follows.

* * * * * * * * *

Q. 9. Were you aware that any draft for $100,000 or $30,000 or any approximate sum had been drawn in 1901 against the New Trinidad

Lake Asphalt Company, Limited, or the New York and Bermudez Company on the Seaboard National Bank or any other bank? A. There was no draft for $100,000 or $30,000 or any approximate sum drawn that year on the New Trinidad Lake Asphalt Company or the New York and Bermudez Company, but there was a draft for $100,000 drawn on the Seaboard National Bank under the following circumstances:

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In January, 1901, the Government of the United States, as the Company was advised, demanded that executive proceedings to despoil the Company be suspended. This demand called a halt in the course of the conspirators, but they took an adroit advantage in the form in which the demand was made. They set to work to get the Department of State completely committed to the proposition that there could be no interference with the matter if it was thrown into the courts. They brought a suit against the New York and Bermudez Company in the High Federal Court on February 16, 1901, to compel it to recognize the validity of 'La Felicidad' title. The scheme succeeded to perfection. The Company was informed by the Department of State on the 28th of February that the Department could not interfere with the course of judicial proceedings in Venezuela. The following is Secretary Hay's letter on this subject:

"DEPARTMENT OF STATE,
WASHINGTON.

February 28th, 1901.

MESSRS. NICOLL, ANABLE & LINDSAY,
Bank of Commerce Building, 31 Nassau Street,
New York City.

GENTLEMEN:—

Referring to your personal letter of the 27th instant to the Solicitor, stating that proceedings have been instituted in the High Federal Court of Venezuela for the assertion of the "Felicidad" claim, and requesting that the Department take appropriate action upon the suggestions contained in your brief, I beg to say that the Department does not feel warranted in interfering with the course of judicial proceedings in Venezuela, nor in taking action with a view to an international arbitration of the controversy unless all judicial remedies have been exhausted, resulting in a denial of justice. I am, Gentlemen,

Your obedient servant,
JOHN HAY."

The Government of the United States having committed itself to this proposition the conspirators then laid hold upon judicial processes with a vengeance.

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The execution of the conspiracy to extort money from the Company and despoil it had reached this point when **General Manuel A. Matos arrived in New York in the mid-summer of 1901.**

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General Matos was a man of the highest position in Caracas, a son-in-law of Guzman Blanco and a trustee of his vast estate and was himself well known at home and abroad as the wealthiest man in Venezuela where all his extensive interests in banks, in industrial enterprises and in plantations were centered. Prior to General Matos's arrival in New York neither the officers of the National Asphalt Company nor the officers of the New York and Bermudez Company had had any relations of any kind with him. * * * * * **When in New York General Matos called on the officers of the National Asphalt Company and presented evidence that he had, after much negotiation, united all the parties and forces opposed to General Castro and would overthrow the latter.** * * * * * **General Matos represented that the section of the country in which the**

Company's property was situated was then potentially in the control and would soon be in the actual possession of the allied forces. * * * * * On these grounds General Matos asked for a sum of money. The Company was confronted with a formidable revolutionary movement which would, for a time at least, control its property and which would be friendly or hostile according to the Company's action on General Matos's request. * * * * * The officers of the National Asphalt Company, therefore, decided to give to General Matos the amount which he asked, namely $100,000. * * * * * The money was paid for the protection of the Company's property during the continuance of the revolution and for the protection of its just rights thereafter in case the revolution succeeded and without any understanding or obligation with respect to its use. The money was provided by the Asphalt Company of America on the order of the National Asphalt Company. * * * * * Under these circumstances of dismissal and reconstruction of courts, attempts to dispossess the Company of its property, and imprisonment of the Company's attorneys by the Castro Government and of control of the territory in which the Company's property was situated by revolutionary forces, further sums amounting to $30,000 all told were paid to General Matos soon after the first payment of $100,000. These additional sums were also provided by the National Asphalt Company. * * * * *

(Cross examination.)

Q. When was it decided that you should be examined under this commission? A. Counsel for the Company decided that when they got ready to.

Q. When was the fact that you were to testify to-day communicated to you? A. To-day.

* * * * * * * * *

Q. Will you please tell me when it was that the consultations resulted in a definite decision as to the information which you had and the character of the testimony which you would give? A. That I cannot answer; it calls for the operation of their (counsel's) minds. I do not know.

Q. I ask you when it was communicated to you? A. To-day.

Q. When was it that you were notified that you would be examined to-day? A. Do you mean—Will you read the question?

Q. (Question read). A. An hour or so before coming here.

Q. At that time had you communicated fully to the counsel for the defendant all of the testimony that you have given here? A. I had.

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Q. When was this typewritten answer from which you read to the interrogatory nine prepared? A. A draft of it a couple of months ago.

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Q. Was the draft changed or altered from the time it was first made until the final paper from which you read was copied? A. There were changes in it.

Q. I will ask you the question squarely. In reference to this question of the $100,000 that you testified was given to Matos, when was it that you or your counsel, to your knowledge, decided that you should give this explanation in reference to that contribution to General Matos? A. Whenever the question should be asked me I intended to tell the facts.

Q. When was it decided that in answer to interrogatory nine you should give this statement about the contribution of the $100,000 to Matos? A. To-day.

Q. By whom was that typewritten paper from which you read in answer to interrogatory nine drafted? A. By myself in consultation with other officers of the Company and their counsel.

Q. Who finally passed upon the perfected draft from which you read? A. The same persons.

Q. Name them? A. Mr. Moore, Mr. Nicoll, Mr. Lindsay of counsel, the President of the Company, Mr. Mack, the Vice-President, Mr. Sewall, the Secretary and Treasurer, Mr. Brown, and myself have all from time to time known of the draft.

Q. I ask you as to the final draft, who prepared it? A. The same people.

Q. Who finally passed upon it? A. The same persons.

Q. Every one of them? A. They were all present and could have passed upon it if they desired, yes.

Q. That is not an answer and you know that, General. Who did finally pass upon that final draft? A. The very persons whom I have named.

Q. All of them? A. Yes, sir.

Q. This morning? A. Last night.

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Q. Was it regarded as at all of any importance as to the effect this answer would produce upon the Department of State of the United States? A. Oh, I think not. These facts are all in their possession and have been for a long time.

Q. Is the fact that $100,000 of the Company's money was handed over to Matos in the possession of the State Department? A. All the affidavits and evidence in the case against us was filed there some time ago.

Q. I want to know whether the Company furnished to the State Department or to anybody, until it was presented here, outside of the Company's officers and counsel, any information of the contribution by the Company's officers of $100,000 to Matos? A. The Company files documents there from time to time as they exist and come into being in the course of this proceeding. They could not file this testimony until it was given.

Q. You have stated in answer to one of my recent questions that the State Department was in possession of all these facts, as I understood you, and I **want to ask you about the facts in relation to the $100,000 and the $30,000 and I ask you whether the State Department is now in possession of that information as coming from the Company or you? A. The Company has not to my knowledge filed any evidence on that point.** The plaintiff has filed evidence on that point long ago in the form of affidavits.

* * * * * * * * *

Q. Did you decide to testify as you have testified as to the disposition of this $100,000 and the payment to Matos before the testimony of General Greene was given? Won't you please answer my question? A. Certainly. The time when I should testify was a matter determined by the counsel for the Company.

Q. And is that the best answer you can give? A. It is.

Q. And the same with reference to the $30,000? A. The same covers all my testimony.

Q. Now didn't you in testifying in answer to question nine refer to General Greene's omission to testify about the $30,000? A. I did.

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Q. Then you had read General Greene's testimony? A. Certainly.

Q. And your testimony in answer to question nine was given with that answer of General Greene's in your mind? A. That was added on to the draft of the answer or statement which I have said was prepared months ago; that was added on since General Greene's testimony, most assuredly.

Q. Then the final draft of your answer from which you read was made since Tuesday? A. Yes, the final completed draft.

Q. Can you take the answer, the typewritten answer, and mark in pencil the changes that were made in it since Tuesday morning? A. I cannot other than the addition of that with reference to General Greene.

Q. Were there other changes? A. There were.
Q. Many of them? A. No.
Q. Will you pick out which parts were changed? A. I cannot.

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Q. Well, it was after the Hay letter that you decided to give Matos the $100,000 and $30,000? A. It was at the time stated in my answer.
Q. And you had no knowledge or information as to the way in which he would spend that money? A. I had not.
Q. Well, how was that money paid to Matos? A. A draft on the Seaboard National Bank made by his bankers in Paris.
Q. It was not paid through Nicoll, Anable and Lindsay? A. It was.
Q. Oh! Well, is that the $101,366.67 that has been referred to as having been paid through Nicoll, Anable and Lindsay? A. That is the amount which was paid through Nicoll, Anable and Lindsay in November.
Q. For that draft? A. For that draft.

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Q. It never occurred to you as a coincidence that it was claimed that that boat, the "Ban Righ," had been bought about that time in Europe for $100,000 and that you had given Matos $100,000; that did not connect itself in your mind in any way? A. It did not.
Q. And you didn't care, did you? A. I did not.
Q. What bankers signed the draft on the Seaboard Bank, do you know? A. I do not recall the name of the French bankers.
Q. Was it the Credit Lyonnaise? A. It was not.
Q. Was any more money besides this $100,000 and this $30,000 ever contributed by the New York and Bermudez Company or by any one for its account? A. Those contributions, as I have distinctly stated, were made by the National Asphalt Company. I know of no other.
Q. Did you have such supervision and did you exercise it of the accounts of these companies as will enable you to testify as to the fact that no moneys were contributed to Matos or any of his associates by any of these companies? A. I should suppose that I was in a position to know everything that was going on at that time.
Q. What do you say then as to the facts? A. I had such general knowledge and supervision as would enable me to know everything of that nature. I ought to have known it.
Q. Now was there any other money? A. Not to my knowledge.
Q. General Andrews, for the purpose of refreshing your recollection, please accept this statement of mine as correct and true. I chanced at luncheon to-day, since recess, in the Lawyers' Club, to meet General Greene, and General Greene's recollection is that he was told by you and Mr. Sewall and Mr. Mack that the $100,000 had been used for the purchase of a steamer by Matos or in his interest and for use by him. Assuming that I correctly state to you what General Greene said to me, does that refresh your recollection at all? A. It does not.
Q. And notwithstanding my statement to you, you adhere to your testimony that you have no knowledge or information or belief on the subject of the use of that $100,000 for such a purpose? A. Entirely so, sir.

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Q. To go back to the point in your answer following the letter of Mr. Hay, as I understand it, the gentlemen of the Company became acquainted with Mr. Matos. Will you tell us how that acquaintance was formed? A. He called voluntarily and without solicitation upon the officers of the Company in New York City.
Q. Did he bring any letter of introduction? A. He brought a letter of introduction.
Q. From whom? A. From Mr. Bean.

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Q. Did you know whether he came from Caracas on the same steamer

with any of the employees of the Company? A. I think there was an employee on the same ship, yes.

Q. Do you recall who it was? A. Mr. Schweizer.

Q. To whom did General Matos present his letter of introduction? A. To me.

Q. And afterwards did he meet Mr. Sewall and Mr. Mack? A. He did.

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Q. Did he go to Ardsley as you recall? A. He did.

Q. With whom? A. **He dined with Mr. Sewall one Sunday afternoon at Ardsley.**

Q. Were either of the other gentlemen present at that time? **A. I was present, a neighbor.**

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Q. Where was the interview held which resulted in the parting with the $100,000 by the Company? A. Well, probably at the office; he called upon more than one occasion.

Q. And so with reference to the $30,000? A. No, that was later.

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Q. How long did he remain here on that visit? A. I have no distinct recollection, but it was a matter of perhaps two or three weeks.

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Q. Where did the conversations between General Matos and yourself take place? A. At No. 11 Broadway.

Q. At what hour of the day? A. During business hours; I do not recall the exact hour.

Q. Who were present at the time or times? A. Various officers of the Company and counsel.

Q. Which officers of the Company and which counsel? A. **Mr. Sewall had conversations with him, Mr. Mack had conversations with him and Mr. Nicoll met him. I don't recall any one else.**

Q. Were those conversations at which these gentlemen were present at the times when you were present also? A. Some of them.

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Q. Was this sum of $100,000 and this sum of $30,000 a matter of very little importance in the enormous business that you gentlemen were transacting? A. No.

Q. Wasn't it quite an important amount? A. It was.

Q. Now I will ask you if you will please state the uses and purposes for which these moneys were to be applied and used? A. Absolutely without any condition or knowledge on our part as to what they were to be applied to.

Q. As I understand it, you were an officer of one of these companies? A. Yes, sir.

Q. Which one? A. Nearly all of them.

Q. And a director? A. Yes.

Q. And so was Mr. Sewall? A. Yes.

Q. And so was Mr. Mack? A. Yes.

Q. As a lawyer and a business man, did you realize then or do you realize now that these moneys aggregating $130,000 were being used by you and these gentlemen as trustees for the stockholders of the Company? A. Certainly.

Q. You bore in mind at the time that you consented to this expenditure that you gentlemen occupied those relations? A. Certainly.

Q. And you were willing to make these payments to Matos without knowing how he intended to use the money? A. Yes.

Q. Please tell us what benefit either, or any, or all of these companies were expected by you gentlemen who acted as directors or officers of

these companies were to receive? A. Protection for the Company's property, as I have already answered at very great length.

Q. And that was all was it? A. That was all.

Q. Matos did not need any money, did he? A. He demanded money.

Q. What? A. He asked for it.

Q. Did he need any money for any purpose? A. I am not prepared to say what Mr. Matos's personal needs may have been.

Q. I understood you to say that you believed him to be, and in fact was, an enormously wealthy man? A. That is the case.

Q. And he was engaged in or contemplated a revolution in Venezuela? A. Yes.

Q. For the purpose of getting control of the Government there? A. For the purpose of protecting his own property.

Q. How did you understand he expected to accomplish that result? A. That I have answered at great length, that he had formed a combination of the various elements which were opposing General Castro.

Q. To overthrow the existing Government? A. That necessarily followed.

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Q. Now did you at that conversation have any understanding or agreement with Matos as to how he was to get this $100,000 or $30,000? A. Yes, sir.

Q. What was that? A. He was to draw for it when he wanted it.

Q. From where? A. Paris.

Q. Did he tell you that he was going to Paris? A. He did.

Q. And you told him that his draft to a certain extent would be honored? A. That was the agreement.

Q. And you consulted counsel on that subject? A. Certainly.

Q. Did you have any supervision or control of that money in any other way than that he was to draw and you were to honor his draft? A. I did not.

Q. Did either of your counsel go to Europe to arrange in any way on that subject? A. They did not.

Q. Well, did you regard it as a careful, prudent, business-like performance? A. I did.

Q. And you acted under the advice of counsel? A. We did.

Q. Well, why was the money paid through Nicoll, Anable and Lindsay? A. We did not care to have every underling in the office know what was going on, all the book-keepers, messengers, errand boys and so on.

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Q. Why didn't you arrange to do that through some other channel than your lawyers? A. It was arranged as the officers of the Company and their counsel thought best to arrange.

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Q. To what accounts were these sums of $100,000 and $30,000 charged or credited? A. Legal expenses.

Q. One of your witnesses, Mr. Buxton, testified that his superior, Mr. Atkinson, told him that it was a payment on account for legal services to Nicoll, Anable and Lindsay. He might have been mistaken. Is not that true? A. It was a payment on account of services, certainly.

Q. Of legal services? A. It was a payment on that account and charged to that account.

Q. Why? A. The relation was a matter which was in the hands of counsel, the protection of our interests in Venezuela.

Q. And you regarded then that this payment of $100,000 to Matos was properly to be considered a payment for legal services? A. Yes, sir.

Q. Was General Matos a lawyer? A. Not to my knowledge. He may have been, but I do not know.

Q. I asked you, General, what channels of communication you had with General Matos after he left New York; did you have any? A. The Company had no communication with him.

Q. Did the lawyers? A. Yes.

Q. And the lawyers then communicated with the Company, is that true? A. They communicated with the Company from time to time.

Q. Was it in that way and in that manner and by that means of communication that the $30,000 reached Matos? A. Yes.

Q. In how many payments? A. I believe there were three.

Q. To what account were those $30,000 charged? A. Same account.

Q. Legal expenses? A. Yes, sir.

Q. In 1901 or 1902 the companies went into the hands of Receivers, did they not? A. In December, 1901, the National Asphalt Company and the Asphalt Company of America went into the hands of Receivers.

Q. Were those $30,000 paid out prior to the receivership? A. Some of it was.

Q. How much? A. I think $15,000 according to the best of my recollection.

Q. When was the other $15,000 paid? A. To the best of my recollection during the winter of this following December.

Q. After the Company had been reorganized? A. No, long before that; while it was in the hands of Receivers.

Q. Was it paid by the Receivers? A. It was not.

Q. By whom was it paid? A. Paid by the officers of the Company who carried on the business.

Q. And paid by them personally? A. Paid in the usual way. The National Asphalt Company was a holding company only and carried on no business. It did not interfere with the business of the Company in any way, the receivership.

Q. Did you mention the date of the payment of the $100,000 in your answer? A. I think I said November, 1901.

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Q. Out of what company did the money come? A. It came from the Asphalt Company of America until it went into the hands of a Receiver.

Q. One of your witnesses, Mr. Buxton I think, testified in substance that the transaction was this: That the New York and Bermudez Company gave its promissory note and received a check for $101,366.67 from the company to which it gave its note and then a check for that amount was signed by the officers of the New York and Bermudez Company. Do you recollect that? A. I think that is substantially right. The New York and Bermudez Company had no money of its own; it had all gone long ago and it was heavily in debt and it simply got this money from the Asphalt Company of America and never paid it back.

Q. The New York and Bermudez Company had really no assets? A. None other than the property in Venezuela.

Q. And the stock of the New York and Bermudez Company was all owned by the other company, wasn't it? A. Yes, indirectly.

Q. Why did you go through that form? A. Because the New York and Bermudez Company carried on its own business.

Q. Without any money? A. Without any money of its own; its own working capital had been absorbed in this Venezuela contest which had been going on.

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Q. Was the note of the New York and Bermudez Company entered upon the books of the company to whom it was given? A. In due course it undoubtedly was, if there was a note. I am not sure whether it was a note or open account. I say substantially correct; it might have been an open account or a note.

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Q. This note would appear on the books of the company to whom it was given as an asset? A. Yes.

Q. And the stockholders of that company would be misled into the belief that they had a good note? A. I think not.

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Q. You have spoken about various things being sent to the State Department in your direct examination. The effort of the Company was to represent everything truthtully to the State Department that went there, wasn't it? A. It was the intention to do so.

Q. Permit me, in order to show that some people may be mistaken in their testimony, to read to you a statement which I understand your counsel has presented to the State Department on this subject: "On January 20, 1902, Dr. Urbaneja, assistant counsel to the Company, was also arrested and thrown into prison. In a letter to the Minister of the Interior, dated the same day, Mr. Rake inquired as to the cause of his detention. The Minister stated in reply that he had been imprisoned on account of complicity in the revolutionary movement. He was released from the fortress of Puerto Cabello where he had been detained, in the following June. In view of the direct allegation that he had, while in its employ, been concerned in revolutionary movements, the Company, being desirous of scrupulously avoiding even an appearance of associations of that kind, did not re-employ him." Do you recollect that, discharging a man? A. I do, in substance.

Q. Did you intend to deceive the State Department as to the moral and mental attitude of the New York and Bermudez Company toward the constituted Government of Venezuela when you stated in this document that your counsel sent to the State Department that you were desirous of scrupulously avoiding any appearance of any associations of that kind and yet had given $130,000 to General Matos under the circumstances you have detailed? A. We did not.

Q. Do you think it was calculated to deceive the State Department? A. That I am not prepared to answer, what was in the mind of counsel when they wrote the letter.

Q. Was it designed to mislead the State Department into the belief that you were scrupulous in the avoidance of any assistance or aid to the revolutionists, bearing in mind what you had done? A. I do not think it was intended to deceive the State Department.

Q. Do you think it was calculated to? A. I do not.

Q. Notwithstanding what you had done for Matos? A. I do not.

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Q. Here is a report of a committee, Messrs. Harrity, Rushton and Sewall, to the holders of the collateral gold certificates. Do you recognize that document? A. Yes, I have seen it.

Q. As being authorized by the Company to be issued? A. The Company had nothing whatever to do with it.

Q. Were these men reliable men who knew what they were about when they gave these figures in this report? A. That is a reorganization committee.

Q. Were they reliable people? A. I do not think it is called upon me to pass upon those gentlemen.

Q. Then I assume they were not, but I will read to you an excerpt from what they said here on another subject: "There are also certain expenditures which are to be considered as extraordinary and, therefore, not properly chargeable entirely to any one of the years under review; particularly the expenditures in South America in 1901 which were of an unusual nature because of litigation and warfare between competing companies and which amounted to the sum of $400,000." Do you know whether that $130,000 formed any part of the $400,000? A. I assume that it does.

Q. Well, then what was the other $270,000? A. All kinds of expenses, for other lawyers, expenses of keeping up an organization in Caracas; lawyers and scouts and runners and everybody down there; travelling expenses, cables, lawyers up here; a great variety of expenses connected with that year's work.

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Q. Do you mean to be understood as saying, General Andrews, that General Greene personally did any act in relation to the payment of either the sum of $100,000 or of those sums which aggregate $30,000? A. Yes.

Q. What? A. He personally fully approved of the payment of the $30,000.

Q. Well, now I regret that because it involves a cross-examination that I hoped to escape. General Andrews, you are a graduate of West Point, are you? A. Yes.

Q. General Greene is a graduate of West Point? A. He is.

Q. And you are both gentlemen? A. I hope so.

Q. Now General Greene has testified here positively on oath that he expressed disapproval of the acts of his associates to them for their conduct, in relation to this Matos affair. Did he testify truthfully? A. **He did express some surprise and disapproval when he got home from Europe and heard of that $100,000 matter.**

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Q. * * * * * There has been sworn to an affidavit by a man named Ira Atkinson and a commission in the Letters Rogatory to take his testimony. Who was Ira Atkinson and what position did he have in the Company? A. He was for many years an employee of the Barber Asphalt Paving Company. * * * * *

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Q. What is he now? A. Secretary of the General Asphalt Company.

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Q. Well, Mr. Atkinson, in his affidavit, swears as follows: "That deponent denies, as alleged by the said Thurber, that in or about the month of September, 1901, or at any time during the year 1901 or at any time while deponent was Treasurer of said Company, drafts for $100,000 or $30,000 or any similar amounts were drawn upon the New Trinidad Lake Asphalt Company, Limited." Now that is literally true, isn't it? A. Yes, sir.

Q. Well, in view of the similarity of names of these various companies and that they are all allied and managed by the same people, are you willing to say whether you think that that statement, while true, was disingenuous if he did know of the drafts of $101,000 and $30,000? A. If my opinion is important the draft of $100,000 was not drawn on any asphalt company at all, so the statement is correct.

Q. But it was really charged to one of the companies, wasn't it? A. After it was paid, yes.

Q. And so with the $30,000? A. Yes, sir.

Q. He further swears, "Deponent recalls visiting the Seaboard National Bank on one occasion in the summer of 1901 with the said Arthur W. Sewall, but denies, as alleged by the said Thurber, that said Sewall and Nelson retired to a private room and after a conference Sewall returned to said Atkinson and directed him to make a check for $100,000 to the order of Nicoll, Anable and Lindsay, who were at that time attorneys for the New York and Bermudez Company, and said Sewall informed said Atkinson that said attorneys would thereupon pay the draft before mentioned, all of which was done." Now that was literally true, wasn't it? A. Not to my knowledge.

Q. I mean his denial? A. As far as I know that statement is correct; yes, sir.

Q. But that is rather disingenuous because this draft was on the Seaboard National Bank, wasn't it? A. The draft was drawn on the Seaboard National Bank.

* * * * * * * * *

Q. I am speaking of what may be regarded as immaterial, perhaps. Did you know of this affidavit of Atkinson's that was prepared by somebody to go down to Venezuela or somewhere in this case? A. I knew there was an affidavit by Atkinson.

Q. Did you prepare it? A. Let me see it.

Q. That is a copy. (Showing witness paper.) A. They look like his affidavits but I have not seen them for some time.

Q. Did you prepare them? A. I did prepare an affidavit for him. Yes.

Q. And probably this one? A. Probably this one.

Any intelligent person can estimate at its true value the statement of Gen. Andrews that there was no understanding with Gen. Matos as to the use the latter was to make of the $100,000 which the Company agreed to give him. It is really quite a strain on one's credulity to be asked to believe that a previously unknown Venezuelan could walk into the Company's offices, ask for and receive $100,000, without any understanding regarding the purposes for which the money was to be used. Then, too, it was no doubt a purely guileless arrangement by which Matos, when he ran short after spending the $100,000, could draw upon the Company's attorneys, Messrs. Nicoll, Anable & Lindsay, for further funds.

As to the other claim that the Company's property at Guanoco was in danger and that it was necessary to give Matos the money he asked for in order to save it from the depredations of the rebel forces, the following testimony of Ezra D. Jeffs, who in 1902 was Superintendent for the Company at Guanoco, shows that **the revolution did not start in that vicinity until seven or eight months after Andrews and the other officials of the Trust had made their arrangement with Matos:**

Q. 1. Whether it is true that you were the Superintendent of the New York and Bermudez Company at Guanoco in the years 1902 and 1903?

A. Yes, sir; part of 1902 and 1903. I was acting Superintendent from February 9th, 1902, until June—I think either the first of June or the first of July, when they made me Superintendent. I was Superintendent from then until the first of March, 1903, along there some time—I do not know the exact date.

Q. 2. Whether it is true that in your capacity as Superintendent you received orders from the General Manager of the New York & Bermudez Company to aid the Revolutionists against the established Government of Venezuela in every manner which the Company in Guanoco could do so?

A. I did. I got those orders about some time in July, I think, 1902.

* * * * * * * * *

(Cross examination.)

Q. How long before the Revolutionists were in charge of the territory around the Company's works that you arrived there?
A. I arrived in December, 1901, the day before Christmas.
Q. When did they come into possession?
A. February, I think.

* * * * * * * * *

(Re-direct examination.)

Q. How many interviews did you have with Major Rafferty on the subject of the manner in which you should treat these Revolutionists?
A. I could not say.
Q. Well, did you have an interview with him in which you and he differed as to the propriety or policy of your giving aid to the Revolutionists on board of any boat or other place?
A. Yes, sir.

* * * * * * * * *

Q. Please state the substance of that conversation so far as it relates to the treatment of the Revolutionists and the Revolution?
A. I was given to understand that any favors such as rations, or helping them out, letting them have the use of the machine shop for fixing their arms, was all right.
Q. From whom did you get that understanding?
A. From Major Rafferty.
Q. Did it take the form of advice or instruction?
A. I considered it instruction.
Q. I would like to have you state in substance what he said. You can not be expected to give the exact language but the substance of what he said?
A. The substance was I was to aid and help the Revolutionists as far as I could. * * * * * At that time he said they could not do anything with Castro and the way I understood it that something had occurred up in Caracas—that they decided against the Company in some manner—
Q. That had changed the policy?
A. Changed the policy in some way, so pursuant to orders any little favor I could do the Revolutionists when I was asked I done it.
Q. What did Rafferty say about Castro?
A. He said, "The d——— ——— ——— ——— we can't do anything with him."
Q. Now, Mr. Jeffs, from the time the Revolution started until you left there, did you in any instance furnish rations, food, supplies, clothing, transportation, or anything else in the way of moral or physical support to the Revolutionists by reason of any threats or coercion on the part of the Revolutionists to you?
A. Never.
Q. Were you ever inspired by any fear of what the Revolutionists would do to the property of the Company and by reason of that gave to them any aid?
A. Never.
Q. Were you ever under any apprehension that the Company's property would be injured or hurt if you did not respond to their demands?
A. None whatever.

* * * * * * * * *

Q. Did you ever know of Rafferty and Matos meeting?
A. Major Rafferty told me that he had met Matos.
Q. Where?
A. At Port of Spain, Queen's Park Hotel. * * * * *

Mr. Jeff's testimony as to the time the Revolution began in the neighborhood of Guanoco is confirmed by that of **Frederick**

R. Bartlett, then stationed and employed at Guanoco and still in the employ of the Trust. Mr. Bartlett was a witness called by the defendant Company. The following extracts are given from his testimony:

Q. 1. Is it absolutely true that you were in Guanoco, Municipality of Union, Guariquen, Venezuela, as technical mining agent and attorney of the New York and Bermudez Company from the middle of the year 1902 remaining there with brief interruptions until the seizure was made of the property of the Company on July 28, 1904, you having been Superintendent during the last three months?

A. That is true; I believe the date is from the last of April, 1902.

* * * * * * * * *

(Redirect examination.)

Q. When you arrived in Venezuela in May, 1902, to what extent were the Revolutionists in control of the territory where the mine was located?

A. They held all the public offices and were in possession of the territory—that is from a military standpoint. * * * * *

Q. How long had the Revolutionists been in control of this part of the country when you arrived there?

A. Possibly about two months.

* * * * * * * * *

(Re-cross examination.)

Q. And the date of your going there (Guanoco) was when?

A. I think in the latter part of April or first part of May, 1902.

Q. And when did I understand the Revolution to have started?

A. I am not certain of that; some two months before, I believe they took possession there. * * * * *

Q. How much of an army did you see down there at Guanoco that Matos had—the Revolutionists?

A. I don't believe I have ever seen over 150 men there.

Q. At any one time?

A. Yes, at any one time.

Q. Have you ever seen as many as 150 men there together?

A. Thereabouts. It is very hard to judge 150 men exactly.

Q. How many times did you see as many men as that—of Revolutionists—together?

A. Oh, not very many times; I do not think over twice—that many.

* * * * * * * * *

(Re-direct examination.)

Q. How many employees did the Company have at Guanoco?

A. From 100 to 300.

Q. Were they principally British subjects?

A. Principally British subjects.

Q. Almost exclusively, weren't they?

A. Almost exclusively.

The following extracts are taken from the testimony of L. A. Kuhn, who was an engineer employed by the New York and Bermudez Company at Guanoco from 1895 until August, 1904:

During the years 1901 and 1902 I was familiar with the operations of the representatives of the New York & Bermudez Company at Guanoco, Venezuela, and at Trinidad. Acting under the direct orders of Maj. Malcolm A. Rafferty, then Manager of the New York & Bermudez Company, or of E. D. Jeffs, the Superintendent of said Company at Guanoco, on several occasions

I gave material assistance to the Revolutionary forces in Venezuela which at that time were operating under the supreme leadership of Gen. Manuel A. Matos against the Government of the country and knew of many instances of such aid being given by the direct orders of the aforesaid Rafferty or Jeffs. On one occasion Gen. Horatio Ducharme and three other officers were given passage on the New York & Bermudez Company's steamer to Trinidad to escape capture by the forces of the Government. At another time this steamer carried currency to Trinidad for Gen. Ducharme, Gen. Ambard, Col. Hueves, Luis Mehares and others to be delivered to one Leon, then acting as Consul in Trinidad for the Revolutionary forces, and brought sealed packages and boxes in return. By the order of the aforesaid Rafferty I repaired at the Company's works at Guanoco a large number of arms for the Revolutionary forces, consisting of more than a hundred Mauser and other rifles, as well as revolvers and machetes, and at the same time furnished the Revolutionary forces with some Winchester rifles and ammunition. At other times I carried correspondence between Gen. Ducharme, Gen. Ambard and others and Manuel A. Matos and Consul Leon in Port of Spain, always by the orders of the aforesaid Rafferty and Jeffs. Messengers were frequently sent by Jeffs to Caño Colorado and to Guariquen to Gen. Ducharme, when he was stationed at those places, to inform him of the movements of the Government forces and such Revolutionary messengers were always assisted with money, provisions, boats, or with horses. On several occasions Gen. Ducharme and staff were entertained at the New York & Bermudez Company's headquarters at Guanoco for several days at a time and were furnished with food and shelter.

On or about the month of June, 1902, **I was approached by the aforesaid Major Malcolm A. Rafferty with the proposition that I should go as Chief Engineer of the steamship "Ban Righ," belonging to the Revolutionary General Matos** and then lying in the harbor at Port of Spain, Trinidad. Rafferty stated that for the sake of appearances it would be well for me to leave the employ of the New York & Bermudez Company a short time before taking the position mentioned on the Ban Righ and stated that I should receive a very considerable increase in my wages from the Revolutionary leaders. Rafferty was very anxious that I should take the position and it was understood that I could at any time reenter the Company's employ. I declined to take the position on the Ban Righ offered me by Rafferty and he was very angry in consequence of my refusal. * * * * *

The photograph marked "A" represents the office of the New York & Bermudez Company on a day when the forces of General Horatio Ducharme were being paid. **The payment to the troops was made by the Cashier of the New York & Bermudez Company.** * * * * *

(Re-direct examination.)

Q. Did you know Carlos Dominguez Olavaria?

A. Yes, very well.

Q. Who was he?

A. Well, during the last part of my stay down there he was Purser of the "Viking." He was a man that had been sent to Trinidad and then to Guanoco, and was hired by Mr. Bean in Caracas, and went from Trinidad to Guanoco.

Q. Do you know whether he was reputed to be related in any way to the Grand Chief Revolutionary, General Matos?

A. He was, at least he said so very often and other people said so; he himself.

Q. That was his general reputation?

A. Yes, and his saying so as well.

Q. During the Revolutionary period, while you were there, did you see or know of anything which indicated that this man was an agent of the Revolutionists, or acting in their interests?

A. Yes, he used to receive all the messengers that came through from one place to another and would pass through Guanoco either one way or

the other. He would receive all the mail they had, open it, read it, and re-seal it and send the messenger on, and, if the messenger needed anything, he would give it to him and send him on his way.

Q. Where did these events of which you speak happen?

A. At headquarters at Guanoco.

Q. And in what place or office?

A. At the Company's office. * * * *

Q. Was this man Olavaria an employee of the Company at that time?

A. He was and is yet, or was when I left. * * * * *

Q. How do you know the contents of these communications that came?

A. By him reading them out and telling us how things were, and there would be Revolutionary bulletins, a sort of small paper they would publish with Revolutionary news in it. He would receive them and give them to us to read. It would be lying around the table there. * * * *

Q. Do you know that couriers from the generals of the Revolution passed through Guanoco with communications to other military officers or persons connected with the Revolution?

A. They did.

Q. And that those communications were opened by Olavaria?

A. They were always delivered to Carlos Dominguez.

Q. Opened and read by him and resealed and forwarded?

A. Yes.

Q. And that he, acting as an employee of the Company, aided and assisted these people in being forwarded to where they wanted to go?

A. I don't know whether he acted as employee or not, but he was in the employ of the Company.

Q. And did those acts?

A. He was getting his money from the Company.

Q. How do you know that?

A. He said so; he said he was getting pay right along and his expenses while he was there, but I don't think he was paid from the Trinidad office; I think he was paid from the Caracas office. * * * * *

Q. Do you know or did you see anything to indicate that the Company's property was at any time in peril or hazard at the hands of the Revolutionary forces?

A. No, sir.

Q. Did you have any apprehension on your part as an employee of the Company of any such thing happening?

A. No, I did not.

Q. Did you know of any arrangement or understanding between the Bermudez Company and the Revolutionists that in consideration that they would refrain from disturbing the property of the Company the Revolutionists could get small amounts of supplies or what was actually needed?

A. No, sir; I did not.

Q. And prior to the initiation of these legal proceedings had you heard of any such coercion or threats?

A. No.

Q. Or agreements?

A. No.

Q. In consequence of fear of the Company's property being imperiled?

A. No, sir.

(Re-cross examination.)

Q. Mr. Kuhn, you say in one of your affidavits that acting under instructions of either Major Rafferty or of E. D. Jeffs, the Superintendent of the Company at Guanoco, on several occasions you gave material assistance to the Revolutionary forces in Venezuela. Did you do anything more in rendering what you have characterized as material assistance than to be kind to these men and polite to them when they asked for paltry favors?

A. If you call it paltry favors to repair 40 or 50 guns at a time, then I was polite.

Extracts from the testimony of Mr. Thomas H. Thomas, who was the nominal President of the New York and Bermudez Company in the year 1901:

Q. 3. Is it true that in the year 1901 you were President of the New York & Bermudez Company?

A. Yes, sir.

Q. 4. As such President, did you receive any instructions from any persons in regard to the business and operations of the Company and who were those persons?

A. I suppose I did receive instructions; I do not remember any particular instructions now, but those who would give me instructions at that time would have been General F. V. Greene, Avery D. Andrews and possibly Mr. Sewall. There were not much instructions in those days.

Q. 5. Is it true that during the month of November, 1901. you, as President of the New York & Bermudez Company, directed the payment out of the treasury of the said Company of the sum of $100,000?

A. Yes, sir.

Q. 6. State to what person this payment was made and by the direction of what person or persons?

A. To my recollection it was made to Nicoll, Anable & Lindsay under the direction of General Andrews and Mr. Sewall.

Q. 7. State for what purpose that payment was made?

A. I do not know.

Q. 8. State whether you received any written order to make said payment and, if so, whether you have the same in your possession, and what were the terms of said order and by what person or persons the same was signed?

A. I did receive a written order. I have it in my possession. The terms of the order, as I recall, were to pay to the order of Nicoll, Anable & Lindsay about $100,000. I have forgotten the exact figures; and the order was signed by General Andrews and Mr. Sewall.

Q. 9. State whether it is true that one of the signatures on said order was in the form of the initials "A. D. A." and whether these initials were in the handwriting of Avery D. Andrews, now Vice-President of the General Asphalt Company?

A. It was signed "A. D. A." and I should say it was Avery D. Andrews's signature or his initials. I knew his handwriting at that time.

Q. 10. State what was the office then held by said Avery D. Andrews in the National Asphalt Company?

A. I think he was Vice-President, but I am not sure.

Q. 11. State whether another of the signatures to the said order was that of Arthur W. Sewall and what position he occupied in the National Asphalt Company?

A. It was; I think he was Secretary, but I am not positive of these official positions in the National.

Q. 12. State under what circumstances you received that order?

A. Well, I was asked to pay this money out and as President of the Company I thought I would like to know a little what I was paying so much money out for, and I was told it had been arranged in the other room of the National. I said 'that is all right, I am satisfied. I will pay it out if somebody will give me an order and sign it so that I will be protected.' That is all I wanted.* * * * *

Q. 14. State where that money came from, how the payment was made and how the same was entered in the books of the New York & Bermudez Company?

A. I can not positively state where the money came from; how the payment was made, was by check, to my recollection, to the order of Nicoll, Anable & Lindsay; and how they were entered in the books of the New York and Bermudez Company, I do not recall.

Q. 15. State whether or not the same was charged to an account called "Government Relations"?

A. It is very possible because we had such an account. * * *

(Re-direct examination.)

Q. Was this transaction conducted in the usual and ordinary manner in which the business of the Company was transacted while you were its President in the payment of large sums of money?

A. This was rather a larger sum than we had been used to paying out, and I was about to leave the Company, and the Company was going into bankruptcy, and I did not know what the Receivers might dig up, and I wanted to be protected myself any way, and that was the reason I got it. I held the office of President, but it was merely an office and that was about all.

Q. No bill of account or statement or request of any kind was presented to you as having been made by this law firm to anybody?

A. Not to me.

Q. Nothing was shown to you at all?

A. Nothing was shown to me.

* * * * * * * * *

Q. Did you ever know whether this item of $101,366.67 went into Government Relations account, or General Expense, or Legal Expense account?

A. From actual knowledge I did not.

Q. What do you mean by that, Mr. Thomas?

A. I mean my recollection is it went to Government Relations but I do not know; I did not see the books; I did not examine them.

* * * * * * * * *

Q. Do you now produce the paper referred to in your testimony this morning?

A. I do.

Q. Is this the paper (showing paper)?

A. It is (marked for identification Exhibit 2 of this date).

Q. It reads "November 18, 1901, Respectfully referred to Mr. (in print) Thomas (in ink) N. Y. & B. Co. pay Nicoll, Anable & Lindsay, Attorneys, on account $101,366.67," the initials "A. D. A." with an underscore and "A. W. Sewall." Mr. Thomas, the initials "A. D. A.", do you know whose those initials are and who put those initials there?

A. I know as well without actually seeing the man write it. It was Avery D. Andrews.

Q. Are you familiar with the handwriting of Mr. Sewall?

A. Yes, fairly well.

Q. Is that his signature?

A. I should say so without question.

Many other witnesses were examined before Commissioners in the United States, but the foregoing extracts are quite sufficient to show the course pursued by the officials of the Asphalt Trust in supporting Matos, without burdening these pages with cumulative evidence of their guilt.

A great mass of testimony was taken in Venezuela, but the following brief extract from the testimony of Ramon B. Luigi will give an idea of the character of the testimony taken there:

Q. 1. Whether it is true and you have positive knowledge of the fact that

while you were in the British Island of Trinidad on or about the 29th of March, 1902, there arrived at said Island the steamer "Ban Righ," or "Libertador," having on board General Manuel Antonio Matos?

A. On or about the 29th of March, 1902, said steamer did arrive but General Matos, with whom I was serving in the capacity of Secretary, had arrived some days previously. The steamer arrived a few days later with the grates all burned out, the boilers completely useless and the ship unable to continue the trip. Under these circumstances it became necessary to find a way to unload the immense quantity of ammunitions on board and as it was impossible to unload them in the British Colony some one suggested the acquisition of another lot of munitions of war until the one on board could be unloaded.

Q. 2. Is it true and have you positive knowledge of the fact that the American citizen, Major Malcolm A. Rafferty, then Superintendent of the mining works that the New York & Bermudez Company held at Guanoco, was at about the above mentioned date in the aforesaid Island of Trinidad and that the aforesaid Rafferty had an understanding with General Manuel Antonio Matos and supplied him with the munitions of war the latter was in need of to continue the Revolution in Venezuela.

A. When the acquisition of another lot was discussed I suggested that Mr. Rafferty, who was the representative of the New York & Bermudez Company, might help us in the matter. General Matos called me aside and told me to sound Mr. Rafferty and to report to him whatever I could obtain from him. He (Rafferty) told me that he wanted to come to an understanding with General Matos and that he could supply as much as half a million cartridges. I reported this to General Matos and he told me to bring Mr. Rafferty to him at the Queen's Park Hotel and to pretend that we had met by chance. It was done as requested. **I introduced them and Rafferty agreed to give Matos the 500,000 rounds of ammunition he asked for.**

Q. 3. Whether it is true and you have positive knowledge of the fact that the aforesaid munitions of war, consisting of 500,000 cartridges, were truly received by General Matos through Mr. Rafferty.

A. I have positive knowledge of the facts. A large portion was sent by the Cano de la Buja way, another by Guanoco and the balance I am not positive how it was delivered because I embarked to invade the country. The Buja portion was distributed to the troops by myself and the Guanoco portion, if the Government has not found it, must be hidden somewhere in Guanoco.

It appears that Gen. Andrews, although he had every opportunity for verifying his figures and dates, did not correctly state the total amount contributed by the Trust to Matos, nor the dates when the payments were made. In a report made by Mr. Henry Tatnall (now Fifth Vice-President and Treasurer of the Pennsylvania R. R. Co.), as Receiver of the Asphalt Company of America, to the Circuit Court of the United States for the District of New Jersey, in answer to a demand made upon him by a stockholder of the General Asphalt Company, the following statement appears:

There was paid to Manuel A. Matos, leader of a Revolution in Venezuela,—which was in progress in the year 1901 and continued into the year 1903,—out of funds furnished by Asphalt Company of America, or by companies whose shares of stock were owned or controlled by it, or by National Asphalt Company, between October 21st, 1901, and January 12, 1903, sums of money aggregating $145,000. Of the above amount $100,000 was paid in one payment in the month of November, 1901, which was

prior to the constitution of the Receivership in this cause, December 28, 1901. The remaining $45,000 was paid by or upon the direction of the Boards of Managers of certain subsidiary companies of Asphalt Company of America and of National Asphalt Company at various times between April 28, 1902, and January 12, 1903. The payments in detail were as follows:

November 18, 1901, By Asphalt Company of America through loan to New York & Bermudez Company (note of New York and Bermudez Company, dated October 23, 1901, being given therefor)	$100,000
April 26, 1902, By The Pennsylvania Asphalt Paving Company...	5,000
June 18, 1902, By The Pennsylvania Asphalt Paving Company...	10,000
November 28, 1902, By The New Trinidad Lake Asphalt Co., Limited	5,000
December 19, 1902, By The Barber Asphalt Paving Co	5,000
December 26, 1902, By New York & Bermudez Co	10,000
January 5, 1903, By New York & Bermudez Co	5,000
January 12, 1903, By New York & Bermudez Co	5,000

In view of the foregoing evidence and of the confessions and admissions of its own officers and employees, no one can question the Asphalt Trust's lively participation and interest in the Matos Rebellion. This civil war was a very serious affair for Venezuela, costing the Country an enormous amount of money and the sacrifice of thousands of lives. The prolongation of the Revolution, due to the Trust's support, afforded no opportunity for Castro to give attention to the demands of Great Britain, Germany and Italy, who seized the opportunity to press their claims by establishing a blockade of Venezuelan ports, and compelling a settlement on their own terms; whereas, had Castro been free to deal with these claims, there is no doubt but that he could have settled them on more advantageous terms than were secured at the subsequent arbitration at the Hague, besides saving the expenses of the blockade, which were charged against him in the final awards.

From the foregoing evidence the true story of the Trust's dealings with Matos and its connection with the attempt to overthrow Castro, can be traced step by step and is, briefly, as follows:

Prior to the early part of July, 1901, General Manuel A. Matos was freely going and coming about the streets of Caracas and no revolutionary project was then under way. He was not in open opposition to Castro at that time and it was, therefore, impossible that the Asphalt Company's property, several hundred miles distant from Caracas, could be subjected to hostile attacks from any revolutionary party under the leadership of Matos. On the 5th of July, 1901, shortly after the departure of the Special Agent of the Trust for New York, Mr. Bean, the then Managing Director of the New York & Bermudez Company, at his residence, gave a dinner at which General Matos was the guest of honor. By the very next steamer leaving La Guaira, July 14, 1901, General Matos sailed for New York, bearing letters of introduction from Mr.

Bean to the officers of the Trust. He arrived in New York on the evening of July 22, 1901, and early the following morning appeared at the offices of the Asphalt Trust, at No. 11 Broadway. He was in New York only for a short time, during which he was handsomely entertained by the Trust officials, and they agreed to give him such money as he might need to carry on a revolution against the Castro Government. General Andrews stated the original amount agreed upon was $100,000, but Matos seems to have had authority to draw for further amounts as he saw fit, and did draw, at various times, at least $45,000, in addition to the $100,000.

After making his deal with the Trust, Matos sailed for Paris and, from the register of the Hotel Continental, appears to have arrived there about August 7, 1901. For several months after this date he was engaged in making his preparations to fight Castro. Having secured from the Trust the necessary financial backing, he proceeded to look about for a suitable steamer for his operations, and some time in the Autumn of 1901, through his agent, Rudolf de Paula, he purchased the steamer "Ban Righ" from the Aberdeen Steam Navigation Co., for £20,000, a sum closely approximating the famous draft on the Seaboard National Bank for $101,366.67, paid by the Trust November 18, 1901.

According to the affidavit of Charles E. Willis, the Captain of the "Ban Righ," whose deposition was taken in London, he joined the vessel as Master, at London, early in November, 1901. The outfitting of this vessel was commenced in London, but she attracted the attention of the British authorities, who surmised a filibustering expedition of some sort, and ordered her to leave British waters. She then proceeded to Antwerp where the remainder of her cargo and equipment were taken on board, and eventually she sailed for the West Indies. The final touches were put on at St. Martins and at Martinique, where Matos and about three hundred of his followers joined the boat in December, 1901. It was not until New Year's Day, 1902, that Matos, while at sea, rechristened the vessel "La Libertador," and raised the Venezuelan flag. The vessel, according to Capt. Willis' testimony, then proceeded to land men, supplies and ammunition at various places along the Venezuelan coast and committed sundry acts of piracy, until she put into Trinidad with her boilers in bad order, in March, 1902. **According to the testimony of Jeffs, Bartlett and others, the revolution in the State of Bermudez and in the vicinity of the Trust's property commenced in February, 1902, about seven months after the officials of the Trust had promised to finance the attempt to overthrow the Government of a country with which the United States was at peace.** After numerous engagements Matos was decisively and overwhelmingly defeated by Castro, who was in personal command of the Government forces, at the bloody battle of La Victoria, October 22, 1902. A few

scattering bands of revolutionists and outlaws continued to make spasmodic raids, until about March or April, 1903. Matos fled to Paris and the steamer "La Libertador," or as she is better known, the "Ban Righ," was sold to the Colombian Government and according to last accounts is lying unused in the Port of Carthagena, United States of Colombia.

It thus appears that the long and labored explanation given by General Andrews in his testimony, wherein he endeavored to show that the action of the Trust, in promising and giving support to Matos, was taken under duress or was induced by alleged fear of the seizure, or threatened seizure, of the asphalt lake at Guanoco, was without any foundation in fact; but, on the other hand, the facts brought out in the testimony are all consistent with the theory that the Matos rebellion was not only financed, but was also originated by the Asphalt Trust.

The Paredes Revolution. Remarkable Coincidence.

If reports current in the United States, Venezuela and Trinidad in February last were true, the Trust, notwithstanding its efforts, diplomatically and otherwise, still entertained hopes of regaining possession of the Bermudez asphalt deposit by or through forcible measures.

It was stated openly that the Trust was backing the ill-fated attempt of Gen. Antonio Paredes in another revolutionary movement in Venezuela against President Castro. Whether this was actually true is known only to the Trust officials, but some coincidences lend color to the report.

When Paredes was ordered to leave the British island of Trinidad by the authorities because of his activity in trying to recruit and equip his filibustering expedition, he landed at Pedernales in the Delta of the Orinoco, proceeded to Barrancas, captured and looted the Custom House at that place and had started for Maturin, a place only two days march from Guanoco, where the asphalt lake is situated, when the Government troops overtook him.

The death of Paredes and his followers has put an effectual stop to revolutionary plots in Venezuela for some time to come.

For many months, while the Paredes plot was hatching, the Trust's steamer "Viking" lay in the harbor at Port of Spain, Trinidad, with a full crew on board prepared for instant service. No use whatever was made of the vessel by the Trust and all requests to charter her by residents of Trinidad, for pleasure or other purposes, were peremptorily refused. It is a rather remarkable coincidence that immediately after news of the failure and death of Paredes reached Trinidad, the crew of the "Viking" was discharged and the American Captain was recalled and sailed for New York by the first steamer.

CHAPTER II.

CASTRO OUSTS THE TRUST.

President Castro seems to have learned of the Asphalt Trust's efforts to overthrow his Government early in 1904. In view of the losses of life and money and of the troubles with other countries growing out of the Trust's support of Matos, it is not at all surprising that Castro should have taken the most vigorous steps possible to punish the offenders and make them pay for the damages sustained.

Action to Cancel the Hamilton Concession.

Suppose a foreign corporation conducting operations in the United States should be caught promoting riot and insurrection against the Government, is there any doubt what would be done by our authorities? If the principals could be apprehended, they would probably be hung. The property of the offending corporation would be confiscated in any event, and the universal verdict would be one of approval. **Can any one conceive that another nation would have the temerity or insolence to call us to account for our action, or for the means adopted to bring the criminals to justice?**

As the conditions of the Hamilton Concession had not been complied with by the Company and as such non-compliance, according to the terms of the concession itself, was a cause for the cancellation of the entire concession, Venezuela, through her Attorney-General, on the 20th of July, 1904, brought an action before the Primary Court of Claims of the Federal Court and Court of Cassation against the New York and Bermudez Company for the dissolution and cancellation of the Hamilton Concession and for the payment of damages caused by non-fulfillment of the terms of the contract, as they might be assessed by experts to be appointed by the Court. He also applied for the appointment of a Receiver to take charge of the Company's property during the pendency of the litigation, as he was entitled to do under Venezuelan procedure. The Court granted the application and appointed Mr. A. H. Carner, who had been replaced as Managing Director of the New York & Bermudez Company, in January, 1901, and **whose connection with the Company finally terminated on April 25, 1901, just prior to the inception of the conspiracy against Castro. Was President Castro the author and first successful exponent of the plan of receiverships for criminal trusts?**

The particulars of the action brought for the cancellation of the Hamilton Concession are fully set forth in the various decisions of the Venezuelan Courts and are as follows:

[Translation.]

Federal Court and Court of Cassation—Primary Court of Claims—Caracas, July 21, 1904—94th and 46th—In his declaration of charges the Attorney General of the Republic, based upon the depositions of the witnesses, Doctors Tomás C. Llamozas, Germán Jimenez and Manuel A. Ponce, and, in conformity with article 373 of the Code of Civil Procedure, asks for the sequestration of the mine which is being exploited by the Company defendant at the locality called "Guanoco," together with all the apparatuses and accessories used in said exploitation. The sequestration asked for is hereby ordered, the Court finding that all the requirements of the law have been complied with, and consequently appoints to carry it into effect, the Judge of the Primary Court of Claims in Civil Procedure of the Section of Cumaná in the State of Bermudez, to whom the necessary warrant shall be delivered with all the corresponding insertions.—Mr. Ambrosio H. Carner, suggested by the Attorney General of the Republic for this purpose in his writ of this same date, is hereby appointed trustee of the said mine with all the apparatuses and accessories pertaining to the exploitation thereof.—Let Mr. Carner be cited to take the corresponding oath in case he accepts.—Let a separate folio be made of the sequestration proceedings.—J. I. Arnal.—Juvenal Anzola, Secretary.

Federal Court and Court of Cassation—Primary Court of Claims—Caracas, October 4, 1904—94th and 46th.—Considered the verbal reports and written conclusions of the parties—On the (20th) twentieth day of July of the current year nineteen hundred and four, the Attorney General of the Republic brought suit against the New York and Bermudez Company, and at the end of his writ of action, based upon clause seven of article 373 of the Code of Civil Procedure, he asked for the sequestration of the mine which the said company is exploiting at the locality called "Guanoco," together with all the apparatuses and accessories pertaining to said exploitation.—The petition having been considered and the clause upon which the action is based having been examined, the Court, finding that the requirements of the law had been complied with, by a decree dated the twenty-first day of July of the current year ordered the sequestration asked for and appointed to carry it out the Judge of the Primary Court of Claims in Civil Procedure of the Section of Cumaná, naming Mr. Ambrosio H. Carner trustee.—The reversal of the decree which ordered the sequestration having been asked for in a petition dated the twenty-second day of July, the Court denied by a decree of the twenty-fifth day of the same month, considering the causes upon which the previous decree was based to be subsistent.—The Court having been advised on the sixteenth day of September last, through the return of the warrant with its results, that the commission entrusted to the Judge of the Section of Cumaná had been carried out, notified both parties through a note of the same date which was signed by both parties in acknowledgment. At the third hearing prescribed by article 378 of the Code of Civil Procedure for the contestation of the sequestration the parties appeared, and by an instrument in writing consisting of one folio, Mr. Robert K. Wright, assisted by Dr. Bance, objected to the sequestration and exhibited the instrument written by him on July twenty-second, and asked that same be read and considered as part of his answer. —The debate prescribed by law having been opened, the Attorney General of the Republic submitted the following proofs in an instrument written on the twenty-second day of September of last year: The ratification of the depositions upon which the petition for the sequestration was based; the copy, number nine thousand and seventy-five, of the *Gaceta Oficial* (Official Gazette) in which was published the sentence pronounced by the Court of Claims in the action brought by Patrick R. Quinlan and Charles M. Warner against the New York & Bermudez Company; a certificate of the Accountant General of the Bureau of Enquiries, to prove what the Company has been paying to the National Treasury on asphalt exported, and that the Company has obtained exemptions of duties on buildings, machinery, utensils and tools introduced by

them; and asked that Dr. Bance, attorney for the company, should give sworn answers.—Doctors Manuel A. Ponce and Tomás C. Llamozas ratified their depositions, the latter having been cross-examined, and Dr. Bance gave the answers required from him. The debate having been closed, a report of the decrees was read and being called upon for information, both parties appeared. The Attorney General of the Republic gave his, written upon six folios, and asked that the *Gaceta Oficial* (Official Gazette), which figures among the principal exhibits, be taken into consideration, there being published in same the Hamilton contract. Dr. J. B. Bance, after having made some explanations and objected to the information of his opponent, delivered his conclusions written upon four folios and a copy of number three thousand three hundred of the *Gaceta Oficial* (Official Gazette). The parties having asked respectively for the privilege of answering and refuting, same was granted, and each one of the parties made the statements which they considered most effective for the defence of their rights. The foregoing statements having been made, the Court proceeded to examine the merits of the case and to study the judicial points thereof in order to establish the basis of its sentence, and

Considering:—That while it is true that in order to determine the nature of an agreement, the intention of the parties thereto and their interpretation of the agreement should be taken into consideration, such a principle can not be made a general one to the extent that agreements entered upon in accordance with certain legal proceedings should lose the character itself given to them by law, for this would be contrary to the law itself, to the intention of the legislator and to the fundamental principles of law.

Considering:—That, given the nature of the contract in question and the unique character of the administrator of the National Government with whom it could be entered into, it results that said contract is classified by the law itself, it being of a limited duration, of an onerous character, and contains stipulations of fixed price.

Considering:—That to discern the nature of a contract, in appreciating a sequestration, is not pre-judging the principal matter, that is to say, whether there is or not sufficient cause to dissolve same, this being a subject upon which the proper debate has not yet been opened from which alone the Court can draw its conclusions when the time comes to decide it; and,

Considering:—That in the debate the defendant did not submit any proof in its own favor, the motives which this Court had to decree the sequestration remaining consequently in force,

Therefore, administering justice in the name of the United States of Venezuela and by authority of the law, the decree of sequestration of the twenty-first day of July of the current year is hereby confirmed.—There is no special condemnation to pay costs.—Let the foregoing be published, registered and filed in due course.—The President—J. I. Arnal.—Juvenal Anzola, Secretary.

Federal Court and Court of Cassation—Only and Last Court of Claims. Caracas, February 15, 1905—94th and 46th—Considered the verbal reports and the written conclusions of the parties.—The Attorney General of the Republic, on the twentieth of July of the past year, 1904, brought action before the Primary Court of Claims of the Federal Court and Court of Cassation of the Republic against the New York and Bermudez Company through its representative in Venezuela, Mr. Robert Kemp Wright, who is of age and a resident, that he should agree to the dissolution of the contract made between the Minister of Fomento with Mr. Horacio R. Hamilton on the nineteenth day of October, eighteen hundred and eighty-three, and which was approved by the National Congress on the sixth of June, eighteen hundred and eighty-four,

and of which the said Company is the cessionary; that he should pay to the Nation the damages caused to it by the non-fulfillment of the contract as justly estimated by experts and calculated in accordance with the basis established by the first additional article; and that he should pay the costs of said action.—He further asked that, whereas the said contract constitutes a lease, the subject of which is the enjoyment by the lessee of all the natural products existing in the unappropriated lands of the former State of Bermudez, and, whereas the proof and telegram submitted prove beyond discussion that the lessee has failed to make the improvements to which it was obligated, such as the canalization of the rivers in said State; in conformity with clause seven of article 373 of the Code of Civil Procedure, the sequestration be decreed of the mine which is being exploited by the said company at the locality called "Guanoco," jurisdiction of the State of Bermudez, together with all the apparatuses and accessories pertaining to said exploitation, to guarantee the results of the action—This last request having been duly considered, and the proof upon which it is based carefully studied, the Court, on the twenty-first day of the same month ordered the sequestration asked for, commissioned to carry it into effect the Judge of the Primary Court of Claims in Civil Procedure of the Section of Cumaná, and named Mr. Ambrosio H. Carner, a citizen of the United States of North America, trustee.—On the twenty-second day of the same month and year the Managing Director of the Company in Venezuela asked for the reversal of the decree of sequestration, but the Court denied this because it considered that the causes upon which the decree was based still subsisted.—The decree having been carried out by the Judge commissioned thereto, and the parties having been notified, objection to the sequestration was made at the third hearing prescribed by article 378 of the Code of Civil Procedure and the debate prescribed by the same article was opened. In the course of same the plaintiff submitted the following proofs: ratification of the depositions upon which was based the petition for sequestration; copy number nine thousand and sixty-five of the *Gaccta Oficial* (Official Gazette), in which is published the sentence given by the Only Court of Claims in the suit brought by Patrick R. Quinlan and Charles M. Warner against the New York and Bermudez Company; a certificate of the Accountant General of the Bureau of Enquiries, to prove what the Company has paid to the National Treasury on asphalt exported, and that the company has obtained exemptions of duties on buildings, machinery, utensils and tools introduced by them; and he asked that Dr. Bance, attorney for the company, should give sworn answers.—The debate having closed, the Court read the decrees and heard testimony, and by decree dated on the fourth of October of the same year, confirmed the sequestration without special condemnation to pay costs.—The Attorney for the company having appealed from this decision, the decrees were brought to this Court, it being the one to take cognizance of the appeal in accordance with article 11 of the Organic Code of the Court.—On the ninth day of November of the same year the Vice-President of the Court, Dr. J. de J. Paul, declined to take cognizance of the matter considering himself as being under the prohibitions of clause fifteen of article 117 of the Code of Civil Procedure; and on the twenty-third day of the same month Dr. Carlos Leon, a member of the Court, also declined to take cognizance alleging clauses nine and fifteen of the aforesaid article. Both of these withdrawals having been found proper as being within the law, the associate Judges, Doctors Juan Bautista Calcaño y Paniza and Emilio H. Velutini, were called upon to take their places, and after having taken the oath prescribed by law, they proceeded to take cognizance of the appeal. The date for the hearing having been fixed, and the decrees having been read, the attorneys of the parties gave their verbal reports and submitted written conclusions.—With such elements the Court to give sentence; and

Considering:—First:—That the President of the Federal Court and Court of Cassation in his capacity of Judge of the Primary Court of Claims had sufficient authority to issue the decree of sequestration given to him by article

7 of the Organic Code of the Federal Court and Court of Cassation, which in no way impairs the faculty given by clause 14 of article 95 of the National Constitution, for on the contrary it regulates it in order to facilitate the proceedings and guarantees further the rights of the parties, for in this manner the cause receives two hearings and not one only, as would happen if the pretension of the defendant were realized; and all this in accordance with the political principle, that the Constitution of a State shall only contain the fundamental rules of government, leaving the regulation thereof to the Organic Codes which are the ones which explain them and serve as guide and complement of them;

Second.—That the circumstance that the Judge of the Primary Court of Claims has stated, when giving the provisional decree of sequestration, that the requirements of the law had been complied with, is, in the judgment of this Court, and in conformity with the provisions of article 337 of the Code of Civil Procedure, sufficient ground upon which to base the decree mentioned; and that while it is true that it is a radical fault to give a sentence without stating the grounds for it, this, according to article 29 of the aforesaid Code, applies in no way to provisional decrees which, like the one of sequestration given by the Primary Court of Claims on the 21st of July, 1904, have not the character of such sentences, and the defects thereof may be corrected when the final sentence is given;

Third.—That while it is true that the parties enjoy before the law the right of entering into contracts, such right does not empower them to change the nature itself of the contracts, for only agreements lawfully made between parties are the ones which form judicial bonds and have force of law between them;

Fourth.—That the Judge of the Primary Court of Claims, in declaring that the will of the parties and the interpretation which they may give to contracts are not the only manner in which these should be interpreted, and that attention should be paid also to the spirit of the law under which they are made, does in no way contradict the principles which obtain in our legislation; and that such considerations are not an obstacle to the determining of the true character of an act by the nature of the matters which form the subject thereof;

Fifth.—That in the present case the object of the contract subject of this action, its duration, the manner which has been established for the payment and the character of administrator held by the Government at the time at which it was made, as appears from No. 15, article 13 of the National Constitution in force at that date, furnish sufficient data to determine its nature and do away with the possibility that the Government should have had the intention, contrary to law, of alienating as is claimed by the contesting party; and

Sixth.—That the Judge who presided at the debate acted in conformity with the law in his appreciation of said circumstances as well as in his estimation of the proofs upon which he based his decree, for article 368 of the Code of Civil Procedure says that the sequestration may be decreed "at any stage and at any degree of the action when there is proof of the right demanded even if it be through the deposition of witnesses, when this proof is admissible according to the Civil Code," and in the present case it is admissible, it being finally observed that the company did not prove the terms of its opposition;

For these reasons, administering justice in the name of the United States of Venezuela and by authority of the law, the decree appealed from is confirmed in all its parts, and the appellant is condemned to pay the costs of this judgment.—Let the foregoing be published, registered and filed in due course. —The Vice-President—Alejandro Urbaneja.—The Reporter—Emilio Constantino Guerrero.—The Chancellor—E. Enrique Tejera.—Member of the

Court—Tomás Marmol.—Associate Judge—Calcaño y Paniza.—Associate Judge—Emilio H. Velutini.—The Secretary—R. Medina Torres.

Federal Court and Court of Cassation.—In the name of the United States of Venezuela.—The Primary Court of Claims of the Federal Court and Court of Cassation—Considered the verbal and written reports of the parties—On the twentieth day of the month of July, nineteen hundred and four, the Attorney General of the Nation brought suit against the New York and Bermudez Company through its representative, Robert Kemp Wright, that he should agree to the dissolution of the contract made by the Minister of Fomento with Horacio R. Hamilton on the nineteenth of October, eighteen hundred and eighty-three, and approved by the National Congress on the sixth of June, eighteen hundred and eighty-four, of which the said company is the cessionary; and that he should pay to the Nation the damages caused by the non-execution of said contract as justly estimated by experts and calculated in accordance with the basis established in the first additional article; and that he should also pay the costs occasioned by the said action.—And the Attorney General, alleging that the contract entered into with Hamilton is a lease, the subject of which is the enjoyment of all the natural products existing in the unappropriated lands of the former State of Bermudez, based upon the proof and the telegram which he submitted to prove that the lessee had failed to make the improvements to which he was obligated, such as the canalization of the rivers in said State, in conformity with clause seven of article 373 of the Code of Civil Procedure, asked that the sequestration be decreed of the mine which was being exploited by the company at "Guanoco," together with all the apparatuses and accessories pertaining to said exploitation in order to guarantee the results of the action—By a writ dated on the twenty-first day of July, nineteen hundred and four, the citing of Robert Kemp Wright was decreed as well as the sequestration asked for, which latter was carried into effect by the Judge of the Primary Court of Claims in Civil Procedure of the Section of Cumaná.—The legal procedure in the matter having been accomplished, the Court under date of October four, nineteen hundred and four, confirmed the sequestration decree of the twenty-first of July of the same year, which decision was in its turn confirmed by the Higher Court on the fifteenth day of February, nineteen hundred and five.—The opportunity having arrived for the contestation of the action this was done at the hearing of the fifth of August, nineteen hundred and four, at the hour previously appointed, the parties being all present, and after the reading of the corresponding documents, the Managing Director of the Company submitted in writing the answer subscribed to by him and by Dr. Juan Bautista Bance, and based his opposition as to facts and as to law on the following: that the Hamilton contract is not a lease, because the stipulations thereof can not be adapted to the rules and consequences of a lease; because the rights granted to Hamilton are not only optional with him, excepting as to the right of exploring, but are of a doubtful and hypothetical practice; because the results of the contract were entirely uncertain, and this was not the only instance of similar concessions; because all the advantages which are claimed for the company, if they had existed, which is denied, do not vitiate the judicial bond of the agreement, and the profits obtained from the negotiation are the fruits of its foresight and of its efforts; because the obligations contracted by the company have all been fulfilled in accordance with the law as is proved by official declarations; because for the obligations which it is alleged the company has not fulfilled there was no time fixed, and if fixed, as it is a question of personal obligations which engender personal acts, they would be prescribed; because the company has other titles by virtue of which the asphalt lake, lands and other annexes at Guanoco belong to it; because the condition of dissolution has not in its effects the latitude claimed for it by the plaintiff; because when the contract was made there were no causals which might give support to illusions and purposes which it is said to-day have vanished; and that the expression "natural products other than the asphalt

is so vague, that, saying too much, it says nothing. He summoned Horacio R. Hamilton for guarantee and indemnification; he asked that the course of the action should be suspended and same thrown out of Court; he expressly reserved the rights of the company to bring action for the damages caused by the sequestration, and asked for the extraordinary term for proofs.—The Court endeavored to conciliate the parties, but with no favorable results; it declared the petition for the extraordinary term opportunely made and reserved its decision upon the other matters. The summons for guarantee and indemnification and the suspension of the action in accordance with the provisions of article 281 of the Code of Civil Procedure having been granted, the action rested thus until by decree of the twenty-fifth of September, nineteen hundred and four, Dr. Juan Bautista Bance, having withdrawn his petition for guarantee and indemnification, same was considered withdrawn, and consequently the action continued its legal course.—Having been opened for evidence, the parties produced that which they saw fit, and the judicial debate appears on the records, of that of Dr. Juan Bautista Bance; that Andres J. Vigas and Ambrosio H. Carner deposed at Caracas; José Vicente Solis, Juan Bosch and Andres Campos at Guiria; José Maria Aristimuño at Maturin; Antonio Cervoni and Laureano Villaba at Guariquen; Charles Arno at Port of Spain; that in Philadelphia, State of Pennsylvania, confrontation was made by the interpreter Gustavo Navarrete y Romay of the report rendered by Horacio R. Hamilton, marked No. 2, which appears on folios 93 to 103 of the third exhibit; that the Ministry of Fomento certified that from the year eighteen hundred and eighty-three, to November, nineteen hundred and four, there had been issued thirty final titles to mines of various kinds located in the jurisdiction of the former State of Bermudez, and various titles to unappropriated lands in the same State; that there were forwarded, properly certified by the Ministry of Fomento, the official notes marked with numbers 374 and 375, sent to the civil and military authorities of the former States of Cumaná and Maturin, in which was transcribed to them the resolution published in number 7986 of the *Gaceta Oficial* (Official Gazette); that the contract was produced which was made on the twelfth of February, eighteen hundred and eighty-six, with Cornelio F. O'Brien regarding the supplying of lumber, and number 7986 of the *Gaceta Oficial* (Official Gazette); that the favorable character of the process verbal of the sequestration and of the process verbal of the New York and Bermudez Company, which is filed in the Ministry of Fomento, were invoked, and that a single copy of the report of Hamilton, the comparison of which was asked for, was filed.—From the evidence submitted by the Attorney General of the Republic it appears in the records that: Santiago Briceño A. deposed at San Felipe; Ildefonso Nuñez, Adolfo Almenar, José Aristimuño Coll, Angel Nuñez, Manuel Antonio Gordon and Lorenzo Arias at Maturin; that the experts, doctors and engineers, Santos Ortega, E. Gomez Franco and Rafael J. Diaz, submitted the report which appears on folios 135 and 136 of the second exhibit; that a certificate of the Accountant General of the Bureau of Enquiries was produced, in which is stated the exportation of the natural products therein mentioned up to the thirtieth of June, nineteen hundred and four; fourteen certified exhibits of the process verbal marked with the letter I, substantiated by the Ministry of Fomento, and referring to the contract made with Horacio R. Hamilton concerning the exploitation in the State of Bermudez of building and carpenter's lumber, rosins, plants, aromatic, essential, dyeing and medicinal seeds; the *Gaceta Oficial* (Official Gazette) No. 9065, the report of the Ministry of Fomento of the year eighteen hundred and eighty-five, and the pamphlet or booklet entitled "The defense of the New York and Bermudez Company before the Federal Court in the action brought against it by Messrs. Charles M. Warner and Patrick R. Quinlan to compel it to agree to the validity of the title to the Asphalt Mine 'Felicidad,' published by Dr. Juan Bautista Bance in January, nineteen hundred and four."—The testimonial and documentary evidences of the attorney of the New York and Bermudez Company tend to prove that the company has carried out its contract, and consequently the obligation to explore

and exploit the natural products existing in the State of Bermudez; and of the witnesses cited for this end, only José Maria Aristimuño and Charles Arno assert that the company exported lumber, the former stating that this happened in eighty-six to eighty-seven, and the latter in eighty-six to eighty-eight, neither of them, however, deposing on cross-examination—to which cross-examination Arno declined to answer—to whom the said lumber was consigned. None of the other witnesses knew for a fact that the exportation of lumber had taken place, and upon being cross-examined they specified that the company had exported only asphalt.—Andres J. Vigas and Ambrosio H. Carner refer to a publication, and the former ends by declaring that only asphalt has been exported. Hamilton's report, undated and marked Number 2, agrees with the original, and refers to a trip of inspection to the places in the concession obtained by him in his contract, and shows that certain preliminary works necessary to the enterprise had been made, the company not having yet commenced the exploitation of the asphalt nor built the railroad which is used by it for this purpose; the certified copies of the communications addressed to the civil authorities of Cumaná and Maturin, which appear on folios numbers 88 and 89 of the third exhibit, prove that the Government acknowledged once again the rights acquired by the company in the terms of its contract; and the certification of the Ministry of Fomento, published in the *Gaceta Oficial* (Official Gazette), No. 7986, stating that the Company has fulfilled its obligations, is an assertion, the legal efficiency of which should be considered in the light of the law—The testimonial evidence of the Attorney General of the Republic tends to demonstrate that the company has not exploited nor exported anything other than asphalt, neglecting the other obligations of the contract; that it has not done any work of canalization, in any of the rivers in the State of Bermudez; the depositions of Manuel Guzman Alvarez, Rafael Velazquez and Santiago Briceño A. confirm the assertion that the company has not done any work of canalization and that the monopoly which it holds has hurt the mining industry, and the exploitation of the natural products of that State; the other witnesses named, who deposed at Maturin, confirm the statement that the company has been during years exploiting and exporting asphalt, it being noticeable that these six depositions show no discrepancy in their substance, and that it can be gathered from them that a considerable number of tons of asphalt was annually exported, and that this exportation was being made more or less since the year nineteen hundred, to the neglect of the other natural products of the State; from the inspection made by the experts it appears that the experts, travelling from Caño Colorado as far as El Resguardo of the same name, and thence to Maturin, did not find, notwithstanding the minute inspection which they made, any work or traces showing that even an attempt had been made to canalize the Caño Colorado nor the River Guarapiche, mentioned in article two additional, which they had before them, of the contract made with Hamilton.—The documentary evidence of the Attorney General of the Republic tends to show that only asphalt has been exported; that the company was obliged to explore and exploit the various natural products of the former State of Bermudez; **that the obligation to canalize was invoked by the company when attempting to renew it;** that the monopoly held by the company was publicly objected to before the authorities by Municipal Councils and at public and private meetings of citizens, which is partly proved by documents emanating from the company itself, by the certifications of the Ministry of Fomento of the contract and of the additions thereto.—At the taking of information, the attorney of the New York and Bermudez Company proposed, as prior points, the decision of the following questions: that of "the incompetency of this Court to give a final sentence in this action," basing same upon the supposed unconstitutionality of faculty 5, article 16, of faculty 2, article 17, and of article 7 of the Organic Law of the Federal Court and Court of Cassation, and the necessity of prohibiting the present judge from proceeding further because he has expressed an opinion "on what is here a principal part of the action" in the action brought by the Attorney General of the Republic in the

latter's name against the French Cable Company, according to "the sentence published in No. 9427 of the *Gaceta Oficial* (Official Gazette)," and for having qualified the Hamilton contract as a lease in the action for sequestration, all in conformity with clause 15 of prohibitions contained in article 117 of the Code of Civil Procedure.—Therefore it becomes necessary to decide these two points before proceding to consider the basis of the matter which is being debated, and the Court decides:

1. *Whereas,* the law of May 5th, 1904, or "Organic Code of the Federal Court and Court of Cassation," does not conflict with faculty 14 of article 95 of the National Constitution, which authorizes said Court to take cognizance "of all controversies arising from contracts or agreements made by the President of the Republic," but on the contrary it regulates the manner of working of the said Court in the authority given to it by the Constitution; and

Whereas, in Section 2 of article 6 of the text quoted it is in no way determined that controversies arising from such contracts shall be examined and judged at one single hearing, for which reason, Congress exercising authority 16 of the Constitution in force, was empowered to promulgate the law relating to the exercising of the authorities of this Court, and to enact regarding the performance of its competency, giving the legal and sufficient power to the President of the Court to act as Judge of the Primary Court of Claims in the cognizance of such matters; for these reasons it is so declared.

2. *Whereas,* the Code of Civil Procedure in force does not establish any precept which authorizes the parties to demand requisitions of inhibition, and in its Title IV it only specifies the causes for which judicial officers may be recused, and those for which they may and should be inhibited;

Whereas, the cause upon which the attorney for the company defendant bases his illegal requisition would not be valid even in the case of a spontaneous inhibition of the present judge, as in order that it should be valid the coincidence of the following circumstance would be necessary: that the judge should have expressed an opinion before passing sentence, and that such opinion be regarding the principal part of the action, provided, however, that the judge challenged was the judge of the action, article 117, number 15 of the Code of Civil Procedure; and

Whereas, the principal part of the action is not constituted in this case by the incompetency and the qualification alleged, but by the cause for which the Government of the Nation has brought suit against the New York and Bermudez Company before the Federal Court and Court of Cassation—therefore, the second point submitted to the decision of this Court is declared without foundation.—And as regards the action deduced and the exception taken, subject matter of this award, the Court, after having studied the acts and the evidence submitted and the allegations of the parties in order to establish a basis for its decision; and

Considering:—That contracts must be executed in good faith and obligate not only to do what is in them expressed, but to all the consequences which are derived from the contracts themselves, according to equity, usage or law (article 1104 of the Civil Code);

That the contract made between the National Government and Horacio R. Hamilton and the latter's cessionaries (folios 23 and 51 and over of Exhibit 2), (folios 1 and over of Exhibit 2) is a bilateral contract in the sense of article 1078 of the Civil Code in force and of its concordant article 1051 of the Code of 1881, in accordance with which said contract was made, **and the additions were made which appear in the records at the request of the said Hamilton himself,** and that consequently it can not be attested in the present case that reciprocal obligations have not arisen on account of the stipulations therein contained, as it appears from simply reading the text of the agree-

ment and of its additional articles that if the Government contracted with Hamilton and his cessionaries the duties contained in articles 1, 2, 3, 4 and 7 of the instrument on folio 1 and over of the first exhibit of the acts, in exchange therefor it acquired the rights specified in the articles of the said instrument marked numbers 5, 6, 9, and those contained in the first and second additional articles of the 19th of October, 1883, and of 30th of May, 1884, which constitute for the contractor Hamilton and his successors or cessionaries, perfect obligations, acknowledged and accepted by the latter also in the contract which they made with Horacio R. Hamilton on the sixteenth day of November, 1885, at New York, and which is to be found in Exhibit 2 of the acts on folios 23 to 34;

Considering:—That obligations must be fulfilled exactly as they have been contracted, the debtor being responsible for damages in case of violation (article 1163, Civil Code of 1881, 1190 of the Code in force);

That it appears in the acts from the testimonial statements made and from the inspection of the experts, and from the certifications issued by competent public officials, that the cessionaries of Hamilton have not fulfilled the obligations which they contracted with the Government of the Nation at numbers 5, 6 and 9, and additional articles of the aforesaid instrument, and that they have only engaged in the exploitation of the asphalt;

That the Ministerial Resolution of July 23d, 1900, and the certification of the Ministry of Fomento of the same date can not contradict the validity of the evidence submitted which has been referred to, since the former only recognizes the right of the company to make use of its rights in accordance with the Hamilton contract, the which does not exclude the possibility of later bringing an action for the dissolution of the contract for a legal cause previously existing, for, while it is true that "the condition of dissolution is always implied in all bilateral contracts, in the case that one of the contracting parties does not fulfill its obligations," it is also true that in this case the contract is not dissolved by inherent right.—The party in favor of which the obligation has not been fulfilled has a disjunctive in its favor: To compel the other party to fulfill the contract if it is possible, or to ask for the dissolution of the contract besides the payment of damages in both cases (article 1110 of the Civil Code of 1881 and 1137 of the Code now in force) which election being optional with the said party, may be made by it when it may best suit its own interests.—And as regards the second, the certification of the Ministry of Fomento, this, even though it were valid, could not invalidate the contrary facts which have been fully demonstrated in this action by the collections and proofs contained in Exhibit 2 of these records; but it is not valid because it is illegal and it is illegal because the certification of the Ministry of Fomento, dated on the twenty-third of July, 1900, is, at most, a personal evidence of the Minister, the private opinion formed by him in view of the documents which he might have had before him to aid him to form his own personal opinion; a certification on the other hand which he was not authorized to issue, as may be seen in the law of the ninth of March, 1898, organic of the Ministries, at pages 26 to 29 and over of the Collection of the Statutes, Vol. XXI, which defines the faculties of the Ministers of State, among none of which is that of issuing certificates as reference.—Furthermore, the certificate issued in the personal manner already mentioned is not a "Ministerial Resolution" dictated in the name of the Federal Executive and by order of the President of the Republic, as is proved by the reading of the text invoked. It lacks, therefore, both in form and in ground all legal efficiency, both for the reasons stated, and because the Constitution in force at the time that the certificate was issued, which was that of 1893, in its article 120 positively prohibits all Magistrates or corporations from exercising functions not expressly authorized by said Constitution or by the laws, declares null and void all acts emanating from a usurped authority, in article 118,

and in article 95 it expresses "that all the acts of the Ministers must conform to the Constitution and the laws," and inasmuch as the act which has been invoked by the defendant is not in conformity with the laws, for these did not give the Minister authority to issue any such declarations, it is evident that the certificate of July 23d mentioned is null and void, it being the act of a usurped authority and does not obligate, on any legal or judicial grounds, the Government of the Republic. In Venezuela the Ministers of State are "the legal, sole and precise organs of the President" (article 94 of the National Constitution of 1903) (83 of the present Constitution). Therefore the acts of the latter are without effect, nor do they obligate to the execution thereof when they are not countersigned by the corresponding Minister; and in the same manner the acts of a Minister do not create this obligation when the act itself shows that it has not been authorized by the President of the Republic, unless the Minister may have been authorized to perform it by a special law.—And in the present case the Minister of Fomento was not authorized by law to issue such certificates, nor did he receive such authority from the President of the Republic, as is proved by the text itself of the document;

That the bilateral contract made between the Government of the Republic and Horacio R. Hamilton, which appears in the records, imposes upon the latter conditions which were expressly accepted by his cessionaries in the instrument of acquisition above mentioned, which appears on folios 23 to 45 of Exhibit Second, and that these conditions must be fulfilled in the manner in which the parties have wished or likely understood them to be fulfilled (article 1111 of the Civil Code of 1881 and 1138 of the present Code), without it being permissible for either one of the parties to invoke the nullity of said conditions, as the question here is not an action for annullation but for dissolution, and the annullation of a pact is not produced by the general law but by the action of an express law ordering it;

That the condition imposed upon Hamilton and his cessionaries in the second additional article of the contract, which was expressly accepted by the New York and Bermudez Company, imposes upon the latter the obligation to canalize one or more rivers in the State of Bermudez, beginning at Caño Colorado and Guarapiche, as far as Maturin, for the purposes of exportation and importation, which work the Government bound itself to pay, granting to them "the exclusive right to navigate the rivers they may canalize," which condition has not been fulfilled "in the manner in which the parties have wished," as is proved by the proofs given in the respective exhibits of evidence submitted by the parties, and by the reiterated confessions of the defendant in the acts of the action since the first answer to the suit;

That the condition referred to can not be classed as an alternative, as is claimed by the defendant, because the aforesaid second additional article does not give to them the option of canalizing or of building a railroad, as has been affirmed, for the single paragraph of the aforesaid article says only "that Hamilton shall have the same rights if he builds a railroad," but in no way establishes that there is no obligation to canalize in the event of the building of a railroad, which would be the case if the condition were a disjunctive one, that is to say, "to canalize one or more rivers in the State of Bermudez, etc., or to build a railroad," and it is not so, according to the clear and precise text of the said paragraph, which indicates that Hamilton, should he build a railroad, could work the line exclusively and charge, in accord with the Government, the traffic dues. And that such has been the intention of the parties can not be brought into doubt, for if the paragraph were to be interpreted as the defendant wishes to-day, this would be an obvious absurdity, to wit, that because of the fact of his having built a railroad, the contractor would have the right to navigate rivers which he had not canalized and have not yet been

canalized by anybody, **when the object of the additional article, inserted in the contract at the request of Hamilton, was to canalize those rivers for "the purposes of importation and exportation;"**

That the obligations taken by Hamilton and expressly accepted by the cessionaries do not constitute optional rights for the latter in the sense that they might or might not fulfill them, at their own will and caprice, is obvious, inasmuch as "the failure to carry out any one of the stipulations herein expressed annuls *de facto* the present contract" (article 9th of same) is observed by the contractor himself, and because in another sense, optional rights are those the exercising of which is not prescribed by desuetude, and may be realized by the owner thereof whenever he pleases, and this is not the case of the New York and Bermudez Company, which is bound to fulfill its obligations and use its rights within the time stipulated in the contract, in the terms and in the manner therein agreed upon and in no other manner. Nor is it admissible that the condition contained in the second additional article is optional in the sense of article 1104 of the Civil Code of 1881 and 1131 of the present Code, as from the text of the said article the contrary is the case, for in said article the defendant is not given the choice between canalizing the rivers and building a railroad, but they do contract the obligation to canalize, and besides this the right is given to them to build a railroad, in which case they may charge dues, etc., over the line, in accord with the Government, but the construction of such railroad does not exclude the canalization of rivers, which is the purpose of the first additional article;

That the principal matter in the present litigation is the action for the dissolution of the contract made between Hamilton, his successors, and assigns and the Government of the United States of Venezuela on account of the failure to execute said contract, and not the legal qualification which the said contract may merit, the circumstance of establishing now whether the contract is one of lease or a non-denominated one, being, therefore, of no value to the parties, for the judicial motive, and even the *de facto* motive issuing from the action deduced, consists of the non-execution on the part of the New York and Bermudez Company of the obligations contained in the instrument transferred by Hamilton, with all its additional articles, to the said Company, the stipulations of which the latter engaged to carry out in the manner wished and understood here by both parties, since they were accepted very expressly by the New York and Bermudez Company in the contract of assignment made by the acquirer, Hamilton, in its favor, without reservations of any kind. But, as in the course of the debates there has been discussed: first, that the Hamilton contract is not one of lease, and second: that the additional clauses are legally null and void, the Court deems proper to decide upon both points and establishes:

First, By a lease of things is understood "a contract (Art. 1487 Civil Code of 1881 and 1531 of the present Code), by which one of the contracting parties engages to give to the other the enjoyment of a thing during a certain period of time and for the payment of a stipulated price which the latter engages to pay." Now, therefore, if these conditions appear in the Hamilton contract, the contract is one of lease. Let us see if they do. The Government has granted to Hamilton the right of exploration or exploitation to which article first of his contract refers, that of exploitation determined in article 2nd, that of navigation to which article 4th refers and the right related in article 7, that is, the Government has obligated itself to allow Hamilton to enjoy all the things therein mentioned and during the time specified in the contract, which is twenty-five years, for the price also determined in articles 5 and 6 and additional referred to in article 6 of the contract. Therein are determined the prices of the things leased. The qualification of "lease" applies from all of the foregoing conditions to the contract, the dissolution of which is demanded, and besides, while it is true that real estate may not be leased for more than

fifteen years, and that leases made for a long period are limited to that time, it is also true that in the present case the subject of the lease is "lands entirely uncultivated," woods existing in unappropriated lands of the State of Bermudez to the exclusion of those of the Section Barcelona, to be explored and exploited; and article 1489 of the Civil Code of 1881 and 1533 of the present Code both establish that leases of lands entirely uncultivated may be made for more than fifteen years, but not more than fifty years, on condition that they are to be cleared of woods and cultivated; and as the exploitation of an unappropriated forest entails the clearing and cultivation thereof, it is logical to conclude that the term of twenty-five years fixed in the Hamilton contract does not deprive this contract of its character of a lease, but on the contrary confirms it. On the other hand, it appears from the judicial proceedings that the Government enfranchised for Hamilton and his successors the springs and rivers in the State of Bermudez and the unappropriated woods of the said jurisdiction, and it also appears from the judicial proceedings (exhibit two) that Hamilton and his successors have not exploited the woods spoken of, are not exploiting them now, nor have they canalized the rivers mentioned in the second additional article. The Government has, therefore, fulfilled on its part the obligation of every renter of things, by allowing the rentee to enjoy the thing rented; but the rentee has not fulfilled his in the full sense of the contract, having limited his efforts to the exploitation alone of an asphalt lake, of only one kind of natural products, cutting off the exploitation of unappropriated lands and the aforesaid canalization, as is shown by the evidence submitted by the plaintiff.

Second, The legal nullity of the additional clauses to the Hamilton contract is the second point argued by the defendant. In this respect the Court considers that inasmuch as the additional articles in the Hamilton contract in relation to the contract itself may be looked upon as accessories to the principal part, which in no way alter or diminish the substance thereof, but on the contrary they are confirmatory of it; that the principal part was approved by the National Congress during its sessions of 1884, as it appears from the records, and the accessory part was approved during the session of Congress of 1885 when considering and approving the special memorial of the Ministry of Fomento of the said year, in which the special attention of the Legislative Body is called to the additional contracts entered into posterior to the approval of the preceding Legislature.—The contract was therefore legally entered into by both parties; the defendant accepted the additional articles to their full extent, therefore the contract has the force of a law between them and compels them to fulfill not only what is therein expressed but the consequences deriving from it according to equity, to custom and to law; and further, the additional clauses might and in the last case should be considered as those consequences which the parties, in order not to leave them to the judgment of the judicial appreciation, chose to specify them expressly in the text itself of the contract, it being therefore unnecessary for their validity, that they should be submitted individually to the discussion in and the approval of Congress, as happens in the case of laws ordinarily promulgated by the Legislative Power on general matters of its competence, since the Hamilton contract had been approved, the additional articles of which are simply accessories which follow its legal and judicial fate.

Considering:—That article 9 of the contract the dissolution of which has been asked for, imposes upon the defendant the obligation to begin the execution thereof within six months, which time could be extended for six months more in the judgment of the Government, counted from the date of its approval by the Federal Council, under pain of cancellation;

That it appears from the judicial proceedings that on various occasions Hamilton and his cessionaries asked for an extension of time in which to

commence the exploration and exploitation of the natural products of the forests existing in the unappropriated lands mentioned in No. 1 of the instrument of 1883, and for the canalization of the rivers mentioned in the second additional article, without their having up to this date fulfilled the agreement;

That the judicial fixing of the time in which the obligation is to be fulfilled is proper when there is no time specified, and if the nature of the obligation or the manner in which it is to be fulfilled, or the necessary place in which to fulfill it, should make it necessary (articles 1118 of the Civil Code of 1881 and 1145 of the present Code), or if the time has been left to the will of the debtor, which has not happened in the present case, inasmuch as the parties fixed in the aforesaid article 9 of the document of 1883 the term of six months "to begin the execution of the contract," that is to say, the exploration and exploitation of the matters therein specified, and especially those contained in its numbers 1 and 2 and in the second additional article, without its being possible to divide the exploration from the exploitation as the defendant now pretends to do, for the contract, which is the law of both parties does not make but on the contrary it embraces in the sentence "to begin the execution of the present contract" the two terms "exploration and exploitation" which are used in the text; and finally,

Considering:—That the prescription invoked by the defendant referring to personal obligations arising for it from the stipulations of the Hamilton contract for failure to execute it in twenty years is not admissible, inasmuch as the duration of the contract is twenty-five years as specified in its article 9 and this fixing of a term makes it unprescribable in the sense that, as long as this term has not expired the cause of the obligation is renewed and, therefore, the prescription is not in order for failure to execute clause 9 which fixes a term for the commencement of the execution of the contract, the dissolution of which is asked for, and further because at all events, it appears from the judicial proceedings that twenty years have not elapsed since the last extension of time granted by the Government, at the request of Hamilton, which is dated October thirteenth, 1885, and expires in April, 1886.

On the above grounds, and administering justice by authority of the law, the action brought by the Attorney General of the Republic against the New York and Bermudez Company, an anonymous Association established at Philadelphia and having a domicile in this City, is hereby declared to be well founded, that is to say: The contract made between the Minister of Fomento and Horacio R. Hamilton on the nineteenth of October, eighteen hundred and eighty-three, and its additional contracts, is hereby declared to be dissolved, and the aforesaid company is sentenced to pay the damages asked for according to the just estimate of experts. There is no special condemnation to pay the costs. Let the foregoing be published and registered.—Given, signed and sealed in the Audience Chamber of the Primary Court of Claims of the Federal Court and Court of Cassation in the Capitol of Caracas on the twentieth day of the month of May, nineteen hundred and five—Year 94 of the Independence and 47 of the Federation.—J. I. Arnal—Juvenal Anzola, Secretary.

In the name of the United States of Venezuela—Only and Last Court of Claims of the Federal Court and Court of Cassation.—Considered the reports of the parties. Through the appeal from the award of the Primary Court of Claims of the Federal Court and Court of Cassation of the twentieth day of May of the current year made by the New York and Bermudez Company the proceedings have reached this Court. On the 20th day of the month of July of the previous year the Attorney General of the Republic brought suit against the New York and Bermudez Company through its representative, Robert Kemp Wright, to compel it to agree to the dissolution of the contract which the Minister

of Fomento, by order of and authorized by the President of the Republic, made on the 15th of September, 1883, with Mr. Horacio R. Hamilton, to which contract additions were made on the 19th of October of the same year and on the 30th of May, 1884, and which was approved by the National Congress on the sixth of June, 1884, and of which contract the aforesaid company is the cessionary. The Attorney General of the Republic demanded also the payment of the damages caused by the failure to execute said contract, according to the just estimate of experts calculated in accordance with the basis established in article one additional, and the costs which the judicial proceedings might cause. The plaintiff alleged in his libel that the matter in question was a contract of lease, the subject of which was the enjoyment of all the natural products existing in the unappropriated lands of the former State of Bermudez. In virtue of this, and based upon the proof and telegram which he submitted to prove that the lessee had failed to make the improvements which he was under obligation to make, such as the canalization of the rivers in the said State, he asked, in conformity with clause 7 article 378 of the Code of Civil Procedure, for the sequestration of the mine which is being exploited by the company at Guanoco, together with all the apparatuses and accessories pertaining to said exploitation in order to guarantee the result of the action. By warrant dated July 21st the New York and Bermudez Company was cited through its legal representative to contest the action, and on the same date the Primary Court of Claims decreed the sequestration asked for, and this was carried into effect by the Judge of the Primary Court of Claims in Civil Proceedings of the section Cumana; it was confirmed after legal proceedings on the 4th of October, 1904. The Higher Court in its turn confirmed the decision last mentioned on the 15th of February of the current year. The opportunity having arrived for the contestation of the action, this was proceeded to at a hearing on the 5th of August of the year 1904 at the hour previously appointed. The parties being present and the proper minutes having been read, the Managing Director of the company submitted his written contestation, authorized by him and by Dr. Juan Bautista Bance; he denied in all its parts the action brought both as to facts and as to law, and based his denial upon the following reasons: that the Hamilton contract is not one of lease, nor did the contracting parties ever think of entering into a contract of lease when they made it, nor has either one of the contracting parties considered or held it as a lease, nor can the stipulations of said agreement be adapted to the rules and consequences of a lease, neither in its form or its grounds; that the rights granted to Hamilton are all of them, with the exception of that of exploring, of a doubtful and hypothetical exercise, on account of their being conditional; that the results of the contract were entirely uncertain and this was not the only example of similar concessions; that all the advantages which are attributed to the company, in case they should exist, which is denied, would not vitiate the judicial charge of the agreement, since the products obtained are the fruit of foresight and efforts; that the obligations contracted have been carefully fulfilled and in the most complete manner, both by the principal, Hamilton, and by the company; and that such fulfillment is fully proved by the official and express declaration of the Federal Executive Power of Venezuela; that the obligations which it is alleged the company has failed to fulfill are not subject to any term and could not be considered as obligations matured and capable of being demanded, until the judicial authority had fixed a term and this had matured; that regarding these same obligations he formally opposes the prescription established by article 1909 of the Civil Code then in force, and by article 1964 of the present Civil Code; that the supposed obligation to canalize one or more rivers never existed legally for Hamilton nor for the company, for had it existed it would be found that it was an alternative obligation and was fulfilled; that even supposing that it had

existed as a simple obligation, it would be found that it was fulfilled as far as possible; that the company has other titles by virtue of which it owns the asphalt lakes, land and other annexes at Guanoco; that the condition of dissolution has not in its effects the latitude attributed to it by the claimant; that the action commenced in the libel of the suit, even supposing that all the facts alleged were true, the company maintains that it is contrary to law; that neither Mr. Hamilton when he contracted, nor the company when the Government accepted it as the cessionary of the contract, possessed large capitals nor anything like them, which might have given rise to illusions and projects which it is to-day claimed have vanished. The company defendant summoned Mr. Horacio R. Hamilton as a guarantee, requested that the course of the proceedings be suspended and requested likewise the extraordinary term for submitting proofs because the Board of Directors and the General Offices of the New York and Bermudez Company were in the City of Philadelphia. It finally asked that the action be thrown out of Court, the Company reserving its right of action for the damages which the sequestration might cause them. An attempt at conciliation between the parties having been made, this was unsuccessful. It was declared that the request for the extraordinary term for submitting proofs was in order and the Court reserved to itself the legal time to decide as to the summons as a guarantee and as to the suspension of the course of the proceedings, the which having been granted by virtue of the provisions of article 281 of the Code of Civil Procedure, the action remained in suspense until Dr. Bance having withdrawn his request for a summons as a guarantee it was considered withdrawn and the action proceeded in its legal course. Evidence having been called for, Dr. Bance submitted his in two written documents dated October 4, 1904, and the Attorney General submitted that which he thought fit in a written document dated the 5th of the same month aforesaid; the consequent writs devolving upon the one and upon the other, dated on the 13th of the aforesaid month of October. Regarding the evidence submitted by Dr. Bance, the result was that Andres J. Vigas and Ambrose H. Carner deposed at Caracas; at Guiria, Jose Vincente Solis, Juan Bosch and Andres Campos; at Maturin, José Maria Aristimiuño; at Guariquen, Antonio Cervoni and Laureano Villaba; at Port of Spain, Charles Arno; that number 7986 of the *Gaceta Oficial* (Official Gazette) of the twenty-fifth of July, nineteen hundred, in which is published a certification issued by the Minister of Fomento on the twenty-third of July of the same year, was added to the file; that by the Ministry of Fomento it was certified that from the year 1883 to the 29th of November, 1904, there had been issued thirty final titles to mines of various kinds located in the jurisdiction of the former State of Bermudez, and several titles of ownership of unappropriated lands belonging to the aforesaid State of Bermudez; that the favorable character of the writs, including the proceedings of sequestration, and all that is favorable in the file of the New York and Bermudez Company in the archives of the Ministry of Fomento, was reproduced; that certified copies were obtained from the same Ministry of the official letters numbers 374 and 375 sent to the Civil and Military authorities of the former States of Cumana and Maturin, in which official letters a transcript was given to said authorities of the resolution published in number 7986 of the *Gaceta Oficial* (Official Gazette); that the contract made on the 12th of February, 1886, with Mr. Cornelio F. O'Brien concerning the supplying of lumber and which appears on folios 4 and over, 5 and over and 6 of the proceedings, was produced; that at Philadelphia, State of Pennsylvania, the Interpreter Gustavo Navarrete y Romay compared the report which appears on folios 93 to 103 of exhibit 3, marked number 2 and undated and signed by Mr. Horacio R. Hamilton, General Manager; a single copy of which report was submitted to the Court for the purposes of said comparison; that a pamphlet submitted entitled thus: "The New York & Bermudez Co.—Allega-

tion of its rights against an illegal Executive Resolution given on January 4th, 1898—Confirmation of its titles and concessions by the Executive Power and the High Federal Court of the United States of Venezuela;" to the end that Messrs. Ambrose H. Carner and Dr. Andres J. Vigas should depose regarding the particulars inserted in folio 3 of the proceedings.—Regarding the evidence submitted by the Attorney General, there appears in the judicial proceedings the depositions of Generals Manuel Guzman Alvarez, Rafael Velazquez and Santiago Briceño A, who were Presidents at different times of the States into which the former State of Bermudez was subdivided, and those of the witnesses named in the justificatory document made by General Luciano Rodriguez before the Judge of the Primary Court in Civil Proceedings of the section Maturin, which latter depositions were ratified before the aforesaid Court in accordance with the petition of the plaintiff. There appears likewise, on folios 137 and 138 and over and 139 of the proceedings, the expert inspection caused by the Attorney General with the purpose of verifying that the Caño Colorado and that Guarapiche have not been canalized. The plaintiff submitted, and it appears in exhibit 2, a certificate of the Accountant General of the Bureau of Enquiries, in which appears the exportation made by the New York and Bermudez Company up to the 30th of July, 1904. The Minister of Fomento issued the certification of various documents and minutes of the file which contains the contract made by the National Executive with Mr. Horacio R. Hamilton for the exploitation of the natural products of the State of Bermudez. The Attorney General further asked that all the witnesses presented by the defendant be cross examined, asked for an interrogatory and alleged the favorable character of the proceedings. The cause having been established, the attorney of the defendant pleaded as preliminary points, the incompetency of the Primary Court of Claims of the Federal Court and Court of Cassation to pronounce sentence in the process, and the necessity to inhibit the said Court—With these elements the Primary Court of Claims of the Federal Court and Court of Cassation gave sentence on the 20th of May of the current year, declaring justified the action brought by the Attorney General of the Republic against the New York and Bermudez Company. This sentence having been appealed, the appeal having been heard and the proceedings having passed to this Higher Court, this Court was constituted in conformity with the law as appears from the minutes dated July 7th, 1905, after having declared to be legal the inhibition of the Vice-President, Dr. Carlos Leon, and having convened by warrant dated July 3rd of the same year, the Associate Judge, Dr. Fernando Cadenas Delgado. The case having been stated, briefs were called for.—The attorney of the company presented his in writing and they were read, and the adverse party stated that he reproduced those which he submitted in the first instance.—As a preliminary point the attorney for the company alleges the incompetency of this Higher Court; and

Considering:—That the authority of the Court of Only and Last Claims to take cognizance of the present litigation emanates from article 11 of the Organic Code of the Federal Court and Court of Cassation;

Considering:—That article 95 of the National Constitution which gives to the Federal Court and Court of Cassation the authority to take cognizance of all controversies arising from contracts or negotiations entered into by the President of the Republic does not ordain the procedure to be observed in the exercise of this authority of the Court, this being peculiar to the organic institutions of the latter;

Considering:—That by virtue of the foregoing the collision adduced by the defendant does not exist;

Considering:—That in view of the provisions of article 10 of the Code of Civil Procedure the Courts of Justice must not apply preferently this constitutional precept except in the case when the law in force, the application of which is asked for, collides with said precept;

Considering:—That in the present case the collision alleged does not exist;

Therefore, it is hereby declared that the Court of Only and Last Claims of the Federal Court and Court of Cassation is competent to take cognizance of the present controversy.—And inasmuch as the attorney for the company has requested the inhibition, alleging that opinions have been expressed by some of the Judges which constitute this Court, the following considerations issue: First: that article 117 of the Code of Civil Procedure establishes that judicial officers, be they ordinary, accidental or special, may be recused.—Second:—that article 119 of the aforesaid Code prescribes that any judicial officer who knows that there is some personal cause for recusation must declare it.—If, therefore, the defense has abandoned the right of recusation which the law grants; if the Judge has not deemed his duty to inhibit himself, not finding within himself the circumstances for recusation, it is indispensable and lawful that the said Judge maintain his jurisdiction over the matter.—*Therefore,* the request for inhibition is denied.—And inasmuch as there were alleged as preliminary points the incompetency of that Court and the request for inhibition of the Judge, this Higher Court, on the grounds that it finds to be in accordance with the law the reasons upon which the Primary Court of Claims based its decision to declare inopportune both the points of incompetency and of inhibition which have been raised, confirms in all its parts the previous decisions of the Primary Court of Claims of the Federal Court and Court of Cassation.—As regards the action,

Considering:—That the dissolution having been demanded of the contract entered into on the 15th of September, 1883, between the Minister of Fomento by order of and authorized by the President, and Mr. Horacio R. Hamilton, of which contract the New York and Bermudez Company is the cessionary, the denomination that may apply to the said contract is foreign to the character and the nature of the action that has been brought; for, in order to decide upon it, it suffices that the said contract be a bilateral one and that it be alleged that one of the contracting parties has not fulfilled his obligation (Art. 1110 of the Civil Code of 1880);

Considering:—That the contract in question is a bilateral one, since from the examinations of the clauses thereof it appears that the parties bound themselves reciprocally. If the Government of Venezuela contracted towards Hamilton and his cessionaries the duties contained in articles 1, 2, 3, 4 and 7 of the instrument on folio 1 and over of the first exhibit of the proceedings, it in exchange acquired the rights which are specified in the said document under numbers 5, 6 and 9 and those which are contained in the 1st and 2nd additional articles of 10th of October, 1883, and 30th of May, 1884.—If Hamilton and his cessionaries may import free of duty the machinery, tools and utensils required for the exploitation of the products of the State of Bermudez, and have acquired the right to exploit the asphalt in the said State, Hamilton and his cessionaries have bound themselves to pay into the public Treasury two bolivares for every nine hundred and ninety-nine and one-half kilograms of asphalt which they may export and five hundredths of a bolivar for every kilogram of any one of the natural products. Hamilton, and consequently his cessionaries, have bound themselves to canalize, by virtue of the second additional article, one or more rivers in the State of Bermudez, commencing with Caño Colorado, Guarapiche up to Maturin, for the exportation and importation, and the Government has granted to them the exclusive right to navigate the rivers they may canalize, charging a tax which is to be

determined in accord with the Government, on the vessels or boats that may navigate them;

Considering:—That the additional clauses were all approved by the National Congress as it appears from the decree of 17th of April, 1886, and from the preliminary exposition of the Memorial of the Ministry of Fomento submitted to the said Congress of 1885. The legal validity of these clauses has been besides acknowledged by the attorney for the Company in the pamphlet entitled "Defense of the New York and Bermudez Company before the Federal Court of Venezuela in the action brought against the Company by Messrs. Charles M. Warner and Patrick R. Quinlan, in order that they agree to the validity of the title to the asphalt mine "Felicidad," which pamphlet has been acknowledged specially at this trial by its author and which says at page 9: "10 In order to form a correct judgment of the rights and obligations arising from the aforesaid agreement, made into a law of Venezuela (article 1076 and 1077 of the Civil Code then in force, similar to articles 1097 and 1098 of the present Code) we reproduce here below its entire text" and attention is called to the fact that a copy thereof is given together with the three additional articles;

Considering:—That from the analysis and appreciation of the evidence submitted by both the contestants it appears to be proven in the judicial proceedings that the company confined itself to the exploitation of one lake of asphalt which was discovered within the territory of the State of Bermudez;

Considering:—That the obligation to canalize one or more of the rivers of the State of Bermudez, contained in article second additional, is a pure and simple obligation independent of the text of the single paragraph of the aforesaid additional article, for which reason it is not just to establish that said canalization or the construction of a railroad determine an alternative obligation. In this kind of obligations the contracting party binds himself to one of two things; and in the present case, the construction of a railroad remains at the option of the contractor, since the paragraph says: "he shall have the same rights should he build a railroad;"

Considering:—That according to the expert report which appears in the proceedings, signed by Engineers S. Ortega, E Gomez Franco and Rafael Diaz, it appears that all along the line of the two portions of the river which they have gone over, that is to say, from the Caño Colorado as far as the Resguardo of the same name, and thence to the City of Maturin, they did not find during the careful inspection which they made, any work sign or marks showing that even an attempt has been made to canalize the said Caño and river, which remain in their primitive state;

Considering:—That while it is true, as it appears from the certification issued by the Minister of Fomento on the 26th of November, 1904, that several communications were sent to the Civil and Military authorities of the States of Cumaná and Maturin in which was transcribed to them the Resolution of the Executive Power which stated that the aforesaid company could exercise each and every one of the rights granted by the contract; and that the said company had the preference in every case, in locating or claiming mines and unappropriated lands, this fact is justified by the circumstance that on the date on which said communications were sent, the dissolution of the contract had not been asked for, or, in other words, the contract stood as long as the dissolution had not been decreed by the judicial authorities;

Considering:—That the certification issued by the Minister of Fomento

on the 23rd of July, 1900, is radically void as issuing from a usurped authority according to the tenor of the provision of article 120 of the Constitution of 1893 which was in force at the time the aforesaid certification was issued.—By said article all Magistrates or Corporations are prohibited from exercising functions which are not expressly attributed to them by the Constitution or the laws. The same Constitution declares to be void all acts issuing from a usurped authority in its article 118, and inasmuch as in the law of the 9th of March, 1898, which organizes the Departments of State, there is nothing among the authorities given to the Ministers of State which authorizes them to issue certifications for reference; and as, furthermore, article 95 of the said Fundamental Pact establishes that the acts of Ministers must conform to the Constitution and the laws, the aforesaid certification lacks, therefore, all legal efficiency, for which reason it can not be considered as a confession, as is claimed by the attorney for the company defendant;

Considering:—That obligations must be fulfilled exactly as they have been contracted.—The debtor is responsible for damages in case of infraction (article 1163 of the Civil Code of 1880, 1190 of the Code now in force);

Considering:—That the condition of dissolution is always implied in bi-lateral contracts, in the event that one of the parties does not fulfill its obligation. In such case the contract is not dissolved by inherent right. The party towards whom an obligation has not been fulfilled has the choice of compelling the other party to fulfillment of the contract, if it is possible, or to demand the dissolution thereof besides the payment of damages in both cases (article 1110 of the Civil Code of 1880, 1137 of Code now in force);

Considering:—That article 9 of the contract under discussion establishes in its concluding part that "the failure to fulfill any one of the stipulations herein expressed cancels *de facto* the present contract" which clause the Federal Court of Venezuela, in its sentence given on the 23rd of August, 1898, on declaring the nullity of the Executive Resolution of January 4th of the same year, requested by the New York and Bermudez Company, in Considerandum 10th qualified as an agreement pure and simple, which qualification this Court confirms; and inasmuch as the said agreement is equivalent in law to the implied condition of dissolution mentioned in article 1110 of the Civil Code of 1880 which is similar to article 1137 of the Code now in force, has the same effects and does not imply the abandonment of any right whatsoever;

Considering:—That the proceedings have fully proved the failure to execute the contract on the part of the company defendant;

Considering:—That the allegation of prescription is inefficient both because the cause of the obligation being subsistent, this being in the present instance the contract of 1883, the obligation itself is subsistent, and because since the month of April, 1886, when the last extension expired, there have not elapsed up to the twentieth day of July, 1904, when the action was brought, the twenty years required by law for the prescription of personal obligations (article 1909 of the Civil Code of 1880, 1964 of the Code now in force);

On these grounds, and administering justice by authority of the law, the award appealed from is confirmed in all its parts, with costs.—Given, signed and sealed in the Audience Chamber of the Federal Court and Court of Cassation at the Federal Capitol in Caracas, on the seventh day of the month of August one thousand nine hundred and five.—Year 95 of

the Independence and 47 of the Federation.—The Vice President—Emilio Constantino Guerrero.—The Reporter.—Tomás Marmol.—The Chancelor.—J. Abdon Vivas.—The Member of the Court.—E. Enrique Tejera.—The Associate Judge, Fernando Cadenas Delgado.—The Associate Judge, Emilio H. Velutini.—The Secretary—R. F. Medina Torres.

The Commission, appointed by the Court to assess damages against the Company for non-compliance with the conditions of the concession, fixed the same at 1,500,000 bolivares, or about $300,000.

Revolutionary Suit.

Following the institution of the cancellation action, the Attorney-General of Venezuela, on Sept. 22, 1904, filed another action against the New York and Bermudez Company, charging the Company with having fomented and aided the Matos Rebellion and demanding that the Company should pay the damages caused to the Government on that account. This suit has advanced very slowly because of the dilatory tactics adopted by the Company's counsel in Venezuela. The policy seems to have been to delay matters as long as possible in the hope of getting the United States Government to use forcible measures against Venezuela to save the Trust from the consequences of its own nefarious acts. Its efforts in this direction will be dealt with in the succeeding chapter.

Notwithstanding the obstacles interposed to delay the progress of the revolutionary suit, a decision was finally reached in the Civil Court of the First Instance, in Caracas, on August 12, 1907. The Asphalt Company was found guilty of having extended assistance to Matos and was condemned to pay a fine of approximately 25,000,000 bolivares ($5,000,000), which represents the expenses incurred by the Venezuelan Government in putting down the Matos Rebellion. Provision was also made for calculating the "moral and material damages" which were to be assessed later. As the New York & Bermudez Company has no assets whatever in Venezuela, and never had any, except its concession and the shipping plant, which was sequestrated under the cancellation suit, it is not likely that the Venezuelan Government will be able to collect the fine imposed unless the United States, in a spirit of generosity similar to that recently displayed in the matter of the Chinese indemnity, should recognize the injury and injustice that has been done to Venezuela through the strenuous advocacy of the Trust's cause.

CHAPTER III.

THE UNITED STATES INTERVENES.

Soon after the commencement of the action brought for the cancellation of its concession, the New York & Bermudez Company, without awaiting the result of the trial of the case in the Venezuelan Courts, as provided in the concession, lost no time in besieging the State Department at Washington with frantic appeals for assistance.

Influences at Work.

In Caracas, the Company's Managing Director found a willing listener in the then United States Minister, whose personal dislike for Castro was well known. At Washington, the Trust evidently placed great reliance upon the friendship of the President of the United States for the Vice-President of the Trust, his former associate on the Board of Police Commissioners in New York City during the administration of Mayor Strong, and also upon the influence of its Chief Chemist, an intimate friend of the President's family. The Trust also found a powerful ally in the then First Assistant Secretary of State, who had no love for Castro, because the latter had asked for his recall some years before when he was United States Minister to Venezuela. The notorious diplomatic scandal of 1905, which resulted in the retirement to private life of both the First Assistant Secretary of State and our Minister to Caracas, was due to the former's questionable dealings with the Trust in Venezuela. This scandal is fresh in the minds of the public and need not be reviewed here.

It would be unnecessary to go into these details except to show the powerful aggregation arrayed against Castro and ready to give color to anything and everything which in any way would be to his discredit.

Working the Newspapers.

The well-known and frequent visits of a high official of the State Department to Newspaper Row in Washington in 1905, and the correspondingly frequent publication of false and malicious stories about Castro, showed an interest far exceeding that which would be natural and proper for an officer of the Government, who was seeking only the best interests of the United States. Perhaps these publications were largely responsible for the famous order issued from the White House, which provided that no news should be given out by the Secretaries of the different departments, but only by the Private Secretary to the President. In addition to the foregoing forces, the Trust, through a press agent in Broad Street, New York, and through other channels in Caracas (including Jaurett), Curacoa, Trinidad, Washington and in Europe, began a campaign of slander and villification of Castro in the newspapers.

Every incident that has happened in Venezuela has been misrepresented and magnified, always adversely to Castro, and many exploded yarns have been re-groomed and trotted out to do double service.

In order to cover up the designs and activities of the Asphalt Trust and to bring about controversies out of which the Trust hoped to secure an advantage to itself, a tremendous effort has been made to manufacture and circulate misleading stories, ridiculous rumors and malicious lies, not only regarding the asphalt controversy, but also concerning every event in any way connected with, or referring to Castro and Venezuelan affairs. Seldom before has there been such a deliberate and bare-faced attempt to fool the press and to throw dust in the eyes of the American people. It is impossible to reproduce in this pamphlet all the falsehoods and mis-statements that have been published, but attention is called to a few specimens:

TRUST FICTION.	FACTS.
July 26, 1904 Announced that Castro had seized New York and Bermudez property.	Receiver was appointed for the property by the High Federal Court.
July 30, 1904. Represented that foreign citizens in Venezuela were greatly excited and alarmed.	No excitement whatever in Venezuela except among the friends of the Asphalt Trust.
July 30, 1904. Represented that Bermudez asphalt deposit had been forcibly seized by Venezuelan soldiers.	Receiver was peacefully placed in possession of the property by an officer of the Court.
July 31, 1904. Represented Germany had presented ultimatum to Venezuela and Minister would be withdrawn unless claims paid immediately.	Berlin Foreign Office stated story entirely false and without foundation.
August 1, 1904. Dispatch from Trinidad stating British Minister had filed protest.	No protest filed.
August 3, 1904. Dispatches printed stating Venezuelan Government was forcing British subjects to work asphalt properties.	No force whatever used—men continued to work of their own free will.
August 14, 1904. Dispatch from Trinidad printed stating British Minister about to go to Bermudez asphalt lake to inquire into imprisonment of American citizens and torture of Englishmen.	British Minister did not go to Bermudez asphalt lake and no Englishmen or other employee was tortured.

TRUST FICTION.	FACTS.
August 15, 1904. Dispatches printed that British warship had been sent to Venezuela to protect British subjects.	H. M. S. "Tribune" at Trinidad on regular annual cruise. Did not visit Venezuela.
August 17, 1904. Warnings advertised broadcast that Trust would hold responsible in damages all shipowners, shipping agents and other persons engaged in transporting, selling or purchasing Bermudez asphalt.	Trust has never taken any further action.
August 18, 1904. Story printed that British workmen had been suspended by thumbs.	Story absolutely false.
September 16, 1904. Story widely circulated that Trust would seize cargo of S. S. "Kennett."	No attempt was made to seize "Kennett" cargo or any subsequent cargo of Bermudez asphalt that has come to the United States.
December 4, 1904. Dispatches printed that Great Britain, France, Italy and other European powers were to interfere in Venezuela.	No attempt at or cause for interference—claims of all European powers were and are being settled in accordance with the Hague awards and the Washington protocols.
December 24, 1904. Castro alleged to be enlisting support of neighboring South American Republics against the United States.	No truth in the report.
January 20, 1905. Dispatches stated Castro had snubbed Bowen and had run away from Caracas to avoid the issue.	President Castro's departure was well known three weeks beforehand and he left Caracas in connection with his political campaign for re-election.
February 17, 1905. Castro represented as "defying" the United States.	Venezuelan Court in other proceedings had rendered a decision sustaining legality of embargo and appointment of Receiver.
March 15, 1905. Statement printed alleging that Minister Bowen had cabled Washington that the Venezuelan Government had begun suit against the French Cable Company to annul its concession and to seize its property.	No such message appears in the U. S. Report on Foreign Relations transmitted to Congress Dec. 5, 1905. The suit against the Cable Company was commenced in November, 1903, to compel it to comply with its contract.

TRUST FICTION.	FACTS.
March 16, 1905. Report printed that Venezuela had annulled Guanipa asphalt concession held by an English corporation.	The Guanipa asphalt concession was not and has not been annulled.
March 17, 1905. Wide circulation of alleged publication of some crazy Venezuelan that Castro would invade the U. S. via Central America and New Orleans.	Too silly for comment.
March 16, 1905. Dispatches from Trinidad that martial law had been proclaimed in Venezuela.	No truth whatever in report.
March 19, 1905. Dispatches printed that Castro had seized some coal mines operated by Italians.	This mine had been seized years before by one of Castro's predecessors and the claim had been settled by the Hague Arbitration.
March 20, 1905. Dispatches published stated that Bowen had cabled State Department that French Minister had presented ultimatum and that two French warships had been ordered post haste to Venezuela.	The whole story was denied from Paris the following day.
August 31, 1905. Castro making preparations for war with United States.	The small Venezuelan gunboat "Restaurador" (formerly the Gould yacht "Atalanta") being repaired at Cramp's yards, Philadelphia.

The latest examples have been that Castro had repudiated the Belgian awards and had withdrawn the Venezuelan delegate to the Hague Peace Conference, both of which reports turned out to be absolutely false.

Going back over newspaper files for the past three or four years, one is astounded at the mass of rubbish, similar to that above mentioned, which has been foisted upon the American people. In addition to the examples above quoted, there can be found press despatches relating to rumors of warlike measures against Venezuela by the United States, France, Italy, Great Britain, Germany, Holland, etc., etc.; of revolutions against Castro's Government too numerous to mention; of Castro's hostility to about every nation on earth, and innumerable reports of his death.

The object of the newspaper campaign was intended to establish a popular prejudice against Castro and indirectly to influence the Washington Administration to adopt a harsh and unyielding policy in dealing with Venezuela, under the impression that such a course would meet with the approval of the American people. Carefully and cunningly the Trust, through its attorneys, Nicoll, Anable and Lindsay and Prof. John Bassett Moore, and through the personal influences before mentioned, placed its case,—colored and distorted, of course, for its own purposes, and carefully omitting any reference to its participation in the Matos Rebellion,—before the State Department, and clamored for protection.

Diplomatic Efforts on Behalf of the Trust.

In 1904 and 1905, Mr. Hay was not only in poor health, but was busily engaged in handling the diplomatic relations of the United States growing out of the Russo-Japanese war and other important matters, which concerned our intercourse with European nations. All Central and South American affairs were in the hands of First Assistant Secretary of State Loomis, who, as it appeared from the disclosures in the Loomis-Bowen scandal, was in close relations with the Asphalt Trust. It is, therefore, reasonable to infer that the diplomatic representations regarding the Bermudez case were in hands decidedly friendly to the Trust and highly hostile to Castro, and that they were not conducted with a proper regard for fairness and justice.

In order to make out the strongest possible showing against Venezuela, other claims were resurrected and joined with the asphalt case. This had the result of disguising the real issue and, at the same time, led the public to believe that Castro had taken advantage of every available opportunity to show his animosity to American commercial interests in Venezuela. Not all the documents and diplomatic correspondence have been made public (notably Judge Calhoun's report), but the papers accompanying the annual messages of Presidents Roosevelt and Castro to the Congresses of their respective countries show clearly the tone and spirit in which the negotiations with Venezuela have been conducted. It is for the American people to judge whether a similar attitude would likely to have been adopted, if the controversy had been with a nation stronger than Venezuela.

The following extracts from the diplomatic correspondence (many of them translated from the Spanish), with comments where necessary, are worthy of careful perusal in order to gain a clear insight into the methods pursued in dealing with Venezuela:

[Note.—The Venezuelan portfolio of "Minister for Foreign Relations" corresponds to that of Secretary of State of the United States. The paraphrased telegrams are quoted exactly as they appear in Document No. 1, House of Representatives,

59th Congress, "Papers Relating to the Foreign Relations of the United States, etc."]

Minister Bowen to the Secretary of State, April 16, 1904.

As President Castro stated for publication to the Herald reporter a few days ago that the French Cable case and the asphalt case are just alike, I respectfully call your attention **to the fact that he began his attack on the asphalt property by seizing it,** while he has not even yet, after months of litigation, taken the property of the French Cable Company. Consequently we have more reason than ever to complain of the injustice of his courts * * * [H. R. Doc. No. 1, 59th Cong., 919.]

Note.—The proceedings against the New York and Bermudez Company and the appointment of a Receiver did not occur until July 21, 1904. Mr. Frederick J. Buxton, an employee and witness for the New York and Bermudez Co., in the Revolutionary action, testified that the Company was still shipping asphalt from Guanoco as late as July, 1904. Mr. Bowen was evidently in error in his statement to Secretary Hay, April 16, 1904, or an error has occurred in printing H. R. Document No. 1, 59th Congress.

Minister Bowen to the Secretary of State, June 25, 1904.

I have the honor to inform you that President Castro has decided to make the New York and Bermudez Company pay him an enormous sum of money or to seize its asphalt lake. * * * It seems that President Castro threatens that if the money is not paid an action will be brought in the courts to dispossess the company, and **evidence will be forthcoming proving that the company aided the Matos Revolution** and is using lands for its railway that do not belong to it. * * * I told the manager that if the case goes to the courts no worse punishment can be inflicted on the company for aiding Matos than can be imposed on the thousands of others that supported the hapless chief. * * * [Id., 919.]

Note.—It thus appears that the State Department had an early intimation of the treason of the Asphalt Trust. In a suit for damages it is customary to make a demand before the action is filed.

The Acting Secretary of State Loomis to Minister Bowen, July 19, 1904.

* * The Department desires to be kept fully informed respecting the demands of the Venezuelan Government upon the New York and Bermudez Asphalt Company for 50,000,000 bolivars. * * * [Id., 920.]

Minister Bowen to the Secretary of State, July 24th, 1904.

I have the honor to enclose herewith a copy of my cablegram to you of the 22nd inst., relative to the embargo of the New York and Bermudez Asphalt lake, a copy of the libel, and a copy of the protest of the manager of the New York and Bermudez Company. The proceedings were *ex parte*. Yesterday the Venezuelan gunboat "Bolivar" left LaGuaira with the man Carner on board to take possession of the asphalt lake. **I think an American fleet should be sent to LaGuaira at once. If the asphalt lake is not returned to the American owners within twenty-four hours after the arrival of the fleet at LaGuaira, I advise that the Custom House be seized there and also the one at Puerto Cabello, and that both of them be held until full satisfaction shall have been obtained by us and agree-**

ments made that will put a stop once and for all to the illegal attacks of President Castro on foreign corporations established in Venezuela. * * * [Id., 921.]

From Minister Bowen to the Minister for Foreign Affairs, July 29, 1904.

If it is true that the Venezuelan Government demanded 50,000,000 bolivars of the New York and Bermudez Company; that when payment of that sum was refused by the said company the Venezuelan Government induced by *ex parte* proceedings the Federal Court and Court of Cassation to place an embargo on the property of said company; and that a custodian has been appointed and sent to take possession of the said property of the said company, I hereby, in conformity with instructions I have just received from Washington, have the honor to inform you that the Government of the United States of America earnestly protests against all said actions and proceedings. [Id., 928.]

[Translation.]

The Minister for Foreign Affairs to Minister Bowen, August 3rd, 1904.

* * * As the protest which your excellency makes in the note in question is founded on facts of a hypothetical nature and present as conclusions premises which are of the same character, the Government in reply cannot attribute to it any foundation except that which is set forth in the communication which your excellency has been pleased to send to me. If on the one hand it has been a matter of surprise in view of the cordial relations existing between the two nations that on the present occasion a previous explanation was not given, the Venezuelan Government, on the other hand, could not but be surprised that to a sphere so foreign as that of diplomacy a matter should be carried that is within the exclusive jurisdiction of competent courts, in which it is fundamentally permissible to state the interested parties have the most complete liberty to make use of all the means of defense given to them by the laws of the country. [Rep. Ven. Min. For. Rel., 1905, 138.]

Minister Bowen to the Minister for Foreign Affairs, Aug. 3, 1904.

* * * I now have the honor to protest formally and in writing against the summary proceedings of the Venezuelan Government in dispossessing directly in its own interests the New York & Bermudez Company of its property without giving to the said company any hearing whatsoever and to inform you that the Government of the United States of America will regard with grave concern any illegal attempt to deprive the said company of its property and rights. [H. R. Doc. No. 1, 59th Cong., 929.]

Minister Bowen to the Minister for Foreign Affairs, Aug. 3, 1904.

* * * The proceedings dispossessing the American Company of its property having been *ex parte* constitute a distinct denial of justice and consequently the Government of the United States of America may very properly take such steps as may be requisite to afford the American company whatever protection it should have. [Id., 929.]

Note.—It will be observed that Minister Bowen assumed to constitute himself a judge of the propriety of the action taken by the legal representative of the Venezuelan Government and by the Venezuelan Courts under the Venezuelan Code of Procedure.

[Translation.]

The Minister for Foreign Affairs to Minister Bowen, Aug. 6, 1904.

I avail myself of this opportunity to inform your excellency that the views which you express in your note cannot be accepted by the Ven-

ezuelan Government, inasmuch as what has happened in the action brought against the above mentioned company is all according to the rules of procedure very well known and applied with absolute rectitude by the court which was called upon to take cognizance of the matter. [Rep. Ven. Min. For. Rel., 1905, 140.]

[Translation.]

The Minister for Foreign Affairs to Minister Bowen, Aug. 6, 1904.

I have seen in your excellency's note of the 3rd inst. that the American Legation is not yet in possession of the information needed to duly understand the suit begun by the Venezuelan Government against the New York & Bermudez Company.

Indeed, your excellency speaks in it of a summary proceeding instituted against the company and dispossessing it of certain property belonging to it. That is not the case. * * *

The reasons alleged as the basis of the action are expressed with perfect clearness in the libel which was published in a local newspaper which I have the honor to send you herewith. * * * * * *

The procedure, being prescribed by law, and having to be observed in these cases, it is not in the power of the President to annul the decree based on the petition of the attorney general nor to make any declaration which might embarrass the free action of the courts, in view of the fact that to them alone is assigned the duty of deciding any petition which in respect to the question at issue the New York & Bermudez Company might make. * * * * * *

From what I have herein set forth it is evident that notice to the company was not necessary in order that the sequestration should be instituted and concluded legally, and consequently the proceedings cannot be denominated *ex parte*. Therefore, as the court has not refused to hear the defendant and did not in the least depart from the rules of procedure which the law prescribes, it is not possible to speak of a denial of justice; and inasmuch as the case in question has clearly defined bounds within which it should be discussed the attention of the Federal Executive has been called to the final part of the note I am answering, in which mention is made of the measures which the Government of the United States might take to offer to the American company whatever protection it should have.

In view of the fact that such declarations are not only unacceptable and against the good name of the nation but also involve a threat against its sovereignty and independence, I am obliged to protest against them in the most formal manner. * * * * * * [Id., 141.]

Minister Bowen to the Secretary of State, Aug. 7th, 1904.

* * * The manager of the company has informed me that the asphalt lake was seized by Carner and about 100 Venezuelan soldiers; that the company's safe was blown open; that the American superintendent at the lake was made a prisoner, but was finally released; that two Venezuelan gunboats are at hand to prevent the lake from being retaken; that the company's British workmen are forced at the point of the bayonet to remain at the lake and to work; and that Carner has engaged a ship to carry asphalt to the rivals of the company in the United States.

President Castro has now reached a point where he will only yield to force. * * * He is most bitter against me and charges me with having opposed him constantly since my return here last January, * * * [H. R. Doc. No. 1, 59th Cong., 928.]

Note.—The foregoing communications clearly show the temper of Mr. Bowen's mind, and it is quite evident that his reports to

the State Department were not made in a calm and dispassionate spirit.

Minister Bowen to the Minister for Foreign Affairs, Aug. 15, 1904.

My Government has examined carefully the complaint of the Venezuelan Government by virtue of which the asphalt lake belonging to the New York & Bermudez Company was forcibly seized, and finds, quite apart from any question of illegality, that no substantial justification for taking such a step exists. It appears, in fact, irregular and wholly unnecessary. No allegation even is made that the company failed to pay all the sums due to the Venezuelan Government on the asphalt that was taken from the lake and exported. The complaint, moreover, wholly disregards the title to the lake that was obtained by the company on Dec. 7th, 1888, under the Venezuelan Mining Law and the definitive title to the land that was obtained by purchase Dec. 14, 1888. Those titles give to the company, as legal proprietor, the right to hold and to work the asphalt lake independent of the Hamilton Concession. The seizure of the property entails on the company enormous losses and renders it unable to fulfill its existing contracts; and the seizure, moreover, was made before any careful judicial investigation was held such as now the Venezuelan Government professes to desire. In view of those facts my Government instructs me to request, in the interests of justice and international harmony, that the Venezuelan Government direct the Attorney-General of Venezuela to secure the removal of the Receiver, and to restore to the company its property pending the final legal settlement of the case. [Id., 939.]

[Translation.]

The Minister for Foreign Affairs to Minister Bowen, Aug. 20, 1904.

* * * * * * I deem it unnecessary to insist on those points which already I have had occasion to examine, and since your excellency informs me that my aforesaid note has been sent to Washington, it is sincerely to be hoped that as in said communication all the charges made against Venezuela are disproved and the true character is given to the matter, the Government of the United States, far from concluding that the moment has arrived for diplomatic intervention, will recommend to the company, as it has been in the custom of doing in similar cases to its citizens, that it should apply in defence of the rights said company may have to the courts of this country. **As it is well known the United States has maintained on more than one occasion the principle that questions referring to the interpretation or existence of contracts made by its citizens with foreign governments can only be decided by the courts of the nation where such contracts were made in conformity with the laws in force in such countries.** [Rep. Ven. Min. For. Rel., 1905, 145.]

[Translation.]

The Minister for Foreign Affairs to Minister Bowen, August 20, 1904.

* * * As to the points contained in the aforesaid note of your excellency the President of the Republic has charged me to say to you that, as they are all related to the sequence of the action instituted in the courts, the Government leaves the decision of them entirely to the court before which the legal representatives of the Bermudez Company are today defending their rights with all the securities, guarantees and liberties which the laws and the constitution of the Republic prescribe. [Id., 146.]

Chargé Hutchinson to the Secretary of State, Sept. 17th, 1904.

* * * * * I have heard from a good source here that a few days ago Mr. Carner had an interview with the Minister of Foreign Re-

lations here, and that he affirmed that the charges of having made the company's men work at the point of the bayonet were absolutely without foundation, and were the fabrication of the company. It is possible that many workmen, perhaps most of the workmen, were not forced to work as described, but I have no doubt a few were subjected to rough treatment, and I have faith in the affidavits so far as they go. [H. R. Doc. No. 1, 59th Cong., 943.]

[Translation.]

The Minister for Foreign Affairs to Chargé Hutchinson, Oct. 29, 1904.

* * * * * * As it can be seen from the correspondence referring to this matter which I have had the honor to carry on with the honorable legation of which you are now in charge, the Government of Venezuela has always informed that of the United States that the above mentioned controversy, having been submitted to the decision of the courts, it is only for the interested parties to make good before the judges the resources or means of defense that they may have. **Such declaration is easy to be explained, since in Venezuela, as in all civilized countries, there exists a perfect separation between the different branches of public power, and the Executive cannot in a case like this but respect the separation, by this means insuring the independence of the courts of the Nation.** And as the New York and Bermudez Company has been able, under the Venezuelan laws, to undertake with entire liberty the means of defense which it has deemed convenient to select, it can be assured that the interference of any other persons whatsoever during the course of the proceedings would not be based on a just cause. With the exceptions of the persons who in this controversy hold the positions of plaintiff and defendant, it would be useless to find any other who actually had the power to interfere in the litigation. If to keep the proceedings within the limits marked by the law which should govern it, according to principles and reasons very well known, the foregoing reasons have existed and are still in existence, **the Executive has also had in view that any discussion outside of the Court is perfectly foreign to the views of the legislator, because, besides its being useless, since the magistrates which have to decide on the points debated would not pay any attention to them, it is, on the other hand, unacceptable since it tends to dispossess the judges, upon whom falls the sovereign power of deciding, of the legitimate authority given to them by law.**

It is well that the company should allege in due time all and every one of the arguments covered by Mr. Adee's note; it is also well that they should petition the court, as it has already been done, to revoke the decree of sequestration; it is also well, finally, that they should submit to the consideration of the court the complaint which they may have against all or any of the acts that may have been carried into effect by the person appointed receiver, who naturally will explain and answer for everything that he may have done in such capacity. All this falls within the limits of the proceedings in this case and consequently within the power of the Judicial authority called upon to decide, but always without usurping the powers which the constitution expressly grants to another department, the Executive could not take cognizance of the various questions which I have just pointed out and which are *in extenso* analyzed in the communication from the Secretary of State. **By thus acting the Government of Venezuela does not only fulfill its essential duty imposed on it by the Federal Constitution, but also submits to precedents and principles well defined and universally adopted.** [Rep. Ven. Min. For. Rel., 1905, 148.]

Chargé Hutchinson to the Minister for Foreign Affairs, Nov. 26, 1904.

It has come to my knowledge that there is a report current, as having come from the Venezuelan Government, that the Government of the

United States has abandoned its request for the removal of the Receiver of the New York and Bermudez Company's property.

I beg to call your excellency's attention to the fact that I expressly told your excellency that the Government of the United States did not do more than drop the discussion of its argument in this respect for the moment, reserving the privilege to press its request further if necessary. The request of the Government of the United States to the Venezuelan Government to instruct its Attorney General to move the court to discharge the Receiver is consistent with and stands with the United States Government's request for a prompt and impartial trial. [H. R. Doc. No. 1, 59th Cong., 972.]

[Translation.]

The Minister for Foreign Affairs to Chargé Hutchinson, Dec. 1, 1904.

The note in which you inform me that there is a rumor supposed to come from the Venezuelan Government that the Government of the United States has abandoned its petition on the removal of the Receiver of the mine that the New York and Bermudez Company had been exploiting has been received at this Department.

You also state in said note that the United States Government has abandoned for the present the discussion relating to the removal of the Receiver, reserving to itself the right of insisting on its petition if needed.

The Venezuelan Government cannot possibly take into account the rumor you refer to, the propagation of which has been wrongly attributed to it, nor has it or will it pay any attention to opinions relating to this case which have not an official and authoritative origin.

Referring to the second question above mentioned, I shall have to refer entirely to what I have already stated to the Legation of which you are in charge. [Rep. Ven. Min. For. Rel., 1905, 151.]

[Translation.]

The Minister for Foreign Affairs to Minister Bowen, January 6, 1905.

* * * * * * The Venezuelan Government, desiring to maintain its good relations with the United States, offers to make with the United States an arbitration treaty for the solution of all legal questions which, having legally acquired diplomatic character, cannot be settled by the two Governments by mutual consent. [H. R. Doc. No. 1, 59th Cong., 1012.]

[Translation.]

Minister Bowen to the Minister for Foreign Affairs, January 11, 1905.

I have the honor to inform your excellency that the President of the United States will accept the offer made by the Venezuelan Government to pay annually 5,000,000 bolivars from the customs receipts to the creditor nations, provided that the other parties to the Washington protocols should consent to it. Moreover, he accepts the offer of the Venezuelan Government to submit to arbitration all the questions, which, being of a diplomatic character, cannot be settled by mutual agreement, and he desires, moreover, that all the claims that have not been settled with the creditor nations, excepting contractual claims and those relating to bonds held by citizens of other countries, shall be submitted to arbitration.

I hope to be able to present to your excellency in a short time the bases for a protocol and to communicate to you the opinions of my Government with reference to a permanent treaty of abritration. [Rep. Ven. Min. For. Rel., 1905, 153.]

[Translation.]

The Minister for Foreign Affairs to Minister Bowen, January 12, 1904.

In relation to this subject, the President has also ordered me to express to you the pleasure which he feels on learning the good offices

which the Government of the United States can lend to that of Venezuela, through you, as well as because the afore-mentioned government accepts on its part the proposition that has been made.

With reference to the arbitration treaty proposed by Venezuela, the government is very pleased that it has been accepted in principle by that of the United States and it hopes that your excellency will kindly, as you offer to do, present for that effect a project of protocol which will be a matter of study.

The government of Venezuela will have in the same way the same pleasure in attending to the representatives of the other nations who may wish, as you have stated, arbitration treaties with Venezuela. [Id.]

* * * * * * * * *

[Telegram.]

The Acting Secretary of State to Minister Bowen, January 12, 1905.

You are authorized to conclude following protocol Bermudez matter. Important insist upon immediate restoration of property. Cable results. [H. R. Doc. No. 1, 59th Cong., 1014.]

[Translation.]

Minister Bowen to the Minister for Foreign Affairs, January 13, 1905.

I have the honor to enclose herewith a protocol **which I received by cable late last night from Washington.**

In Article 5, you will please observe that the immediate restitution of its property to the New York & Bermudez Company is stipulated. I have instructions to insist on the point that such a stipulation should be carried into effect at once. In so doing I request your excellency to recollect that the Venezuelan Government on restoring the property will give to the United States an agreeable proof of its good disposition to treat this case with absolute equity, and to make the arbitrators investigate all the rights that the company enjoyed before it was dispossessed.

As your excellency informed me verbally that this case could be submitted to arbitration, and as it is obvious that the Government of the United States desires to put this agreement in the form of a protocol before taking into consideration the rather complicated questions of claims, I trust that you will order said protocol to be translated into Spanish in order that we should be able to give it proper form and sign four copies of it as soon as possible. [Rep. Min. For. Rel., 1905, 155.]

[Enclosure—Translation.]

Protocol of an agreement between the United States of America and the United States of Venezuela for submitting to arbitration all the questions pending between the Venezuelan Government and the New York & Bermudez Company, a corporation established under the laws of the State of New York and a citizen of the United States.

Inasmuch as between the Venezuelan Government and the New York & Bermudez Company there have been and still are some differences, especially in connection with the asphalt mine or deposit commonly called Bermudez Lake in the State of Bermudez in Venezuela, and

Inasmuch as in July last, by an instrument issued by the Federal and Cassation Court of Venezuela, at the request of the Venezuelan Government, that mine or deposit was sequestrated as well as all its works and belongings were taken away from the New York & Bermudez Company against the protest of the Government of the United States, as well as that of the company, and

Inasmuch as in the interests of justice and of the friendly relations existing between the two countries it is desired to put an end once and for all to all differences between the Venezuelan Government and said company by means of international arbitration,

The United States of America and the United States of Venezuela, through their respective representatives, Herbert W. Bowen, Envoy Extraordinary and Minister Plenipotentiary of the United States of America in the United States of Venezuela, of the first part, and Dr. Gustavo J. Sanabria, Minister of Foreign Relations of the United States of Venezuela, of the second part, have hereby agreed on the following articles:

Article 1. All differences heretofore and now existing between the Government of Venezuela and the New York & Bermudez Company and all the claims coming from either party that may have been or may not have been diplomatically presented shall be submitted for their decision to a commission of three arbitrators which will be appointed, one by the President of the United States, another one by the President of Venezuela, and the third by both the President of the United States and the President of Venezuela jointly within a period of sixty days. In case of death, absence or incapacity of any of the arbitrators, or in the event that one of said arbitrators should cease in his functions, his place will be filled in the same manner that the original appointment was made, a period of sixty days being allowed from the date in which such vacancy should occur.

Article 2. The arbitrators will meet in the City of Washington within sixty days after date of the appointment of the third arbitrator. The vote of two arbitrators will be sufficient for the decision of all the questions submitted to them, a definitive decision included.

Article 3. Within a period of six months after this protocol has been signed each party shall present to the other and to its agents and also to every one of the arbitrators two printed copies of its pleadings as well as documents and evidence they may have and testimonies sworn to by their respective witnesses. Within another period of four months either party will have the right in the same manner to file rebuttal with documents, proofs and additional evidence sworn to in answer to the pleadings, documents and proofs filed by the other party. In the case that either one or the other party should refer in its pleadings or rebuttal to any document which might be in its exclusive possession without enclosing a copy, said party will have to supply the other party with a copy and either party will have the right to ask the other through the arbitrators that it should produce the originals or certified copies of whatever papers may have been produced as evidence.

Article 4. Within a period of four months after the expiration of the delay allowed for the production of rebuttal testimony, each government will have the right through its agent, as well as through the means of additional attorneys to plead its costs before the arbitrators, either verbally or in writing. Each party will supply the other with copies of any written arguments whatsoever and both parties will be at liberty to give a written answer, provided such answer should be filed within the period of four months already mentioned.

Article 5. All proceedings, either judicial or administrative, pending against the New York & Bermudez Company, at the request of the Venezuelan Government, will be immediately stopped and the decision rendered by virtue of the present protocol shall be accepted as a final decision of all the questions involved in said proceedings and of all rights whatsoever that said company may have in Venezuela by virtue of its concessions, or title deeds, or any other reason, that of indemnity for any violation of said rights included. The company shall be immediately restored to the possession and enjoyment of the Bermudez Lake, its works and accessories as fully as before the sequestration was decreed

and it will be allowed to remain in such possession and enjoyment subject solely to the decision of the arbitrators, and the Venezuelan Government will return insofar as it may be possible all the asphalt and all the properties taken away from the company at the time and since the sequestration was decreed. It will also give the company all assistance in order to ascertain and recoup all the asphalt and all the properties which may have been taken away from the direct control of the company.

Article 6. The New York & Bermudez Company will be allowed to search for and freely obtain the testimony of witnesses by means of agents of its own selection, either Venezuelans or foreigners, in any part of the country of Venezuela. Such agents shall not be hindered nor threatened, nor forcibly prevented and no person will be impeded nor dissuaded from giving testimony in favor of the company nor in any way be allowed to suffer by reason of having given such testimony. The company will be allowed to communicate freely, either by cable or by other means, with its representatives and agents in Venezuela.

Article 7. The decision of the tribunal shall be rendered within a period of fifteen months from the date of the signing of the present protocol. It will be made in writing and shall be considered as definite and conclusive.

Article 8. The arbitrators shall be paid by both governments equally a reasonable compensation for their services and all the incidental expenses and cost of employees, and all other work will be paid in the same way.

Four copies made in English and Spanish in Caracas, the of , 1905. [Id., 156.]

In an article in the "North American Review" of March 15, 1907, under the title of "Queer Diplomacy with Castro," Mr. Herbert W. Bowen, referring to the proposed protocol above quoted, says:

"**The main issue between the United States and Venezuela was the asphalt case.** * * * * * At this juncture a proposition was made by the American legation at Caracas to President Castro, to settle by arbitration all pending disputes with the United States and other nations. His Minister for Foreign Affairs urged him to accept the plan, and he finally gave a favorable answer. President Roosevelt and Mr. Hay were then consulted, and they at once approved of the main part of the plan, as is shown by the following extract from our book of Foreign Relations, 1905:

[Telegram—Paraphrase.]

The Secretary of State to Minister Bowen, January 9, 1905.

Mr. Hay states that the President approves acceptance of 5,000,000 bolivars, annually to be paid to all creditor Powers from customs revenues, provided said Powers assent. The President could not interfere in any way in relation to German and British bondholders, that being a question in which the government is not concerned.

The President approves the suggestion of an arbitration treaty with the United States for settlement of all questions which, being of a diplo-

matic character, cannot be settled by mutual consent. Also of the provision to settle by arbitration unsettled claims of all the Powers, except contractual claims and bonds held by citizens of other governments.

The Department will cable Mr. Bowen bases of protocol for arbitration of all disputed claims of the United States and other nations, excepting bonds and all claims of a contractual nature.

The Department will take under advisement the question of a permanent treaty of arbitration.

"President Castro was duly informed of the entire contents of the cablegram, and it seemed to him and his Ministers perfectly satisfactory. Private arrangements were made with the British and German bondholders, and ultimately their claims were duly paid; so the situation was favorable to a clean and complete settlement of all the grievances of the creditor nations. The bases of the protocol promised by Mr. Hay were, consequently, now eagerly awaited. They would, it was thought, mark the beginning of a new era in South American diplomacy, promote arbitration generally, and lessen to such an extent the causes for European aggression in South American waters as practically to relieve the United States of all apprehension that the Monroe Doctrine would be attacked. Three days after the receipt at Caracas of Mr. Hay's cablegram—to wit, on January 12th, 1905, —the promised protocol arrived by cable. It was signed by Mr. Loomis and did not cover the 5,000,000 bolivar agreement, nor the claims of other nations, **nor anything except the asphalt case!** And it was couched in such displeasing terms that President Castro immediately rejected it. No word of explanation or apology accompanied it. **The Venezuelan Government, as well as the American Minister, was astounded.** Subsequently, it was learned that **the entire protocol had been written by the attorney of the Asphalt Company. The explanation offered by President Castro's friends was that the Asphalt Company feared arbitration, and so broke up the entire scheme by getting an offensive protocol sent to President Castro.** Negotiations were continued for a time to induce President Castro to settle the asphalt case, but he sent to Washington an agent, who succeeded absolutely in undermining the influence of Mr. Hay, as is shown by his cablegram to President Castro sent just after Mr. Hay addressed his so-called "ultimatum" to Venezuela, and stating in substance that after President Castro had answered the ultimatum the matter would be allowed to drop.

"Several attempts have been made to fix on Mr. Hay the responsibility for all the occurrences in the Department of State at this time, **but it is now pretty generally known that he was utterly unable to cope with the forces arrayed against him.**"

[Telegram—Paraphrase.]

Minister Bowen to the Secretary of State, January 13, 1905.

(Mr. Bowen reports that he presented to the Minister of Foreign Affairs this day the protocol with a note in which he insisted on the imme-

diate restoration to the Asphalt Company of its property. The Minister said: "Your government in its cable instructions to you accepted the offer of the Venezuelan Government to submit to arbitration all questions which, being of a diplomatic character, cannot be settled by mutual consent, and I understood therefore that you would present a protocol general in character covering all pending questions." Mr. Bowen adds that the Minister promised to answer in writing. Mr. Bowen believes he will object to changing the agreement. [H. R. Doc. No. 1, 59th Cong., 1016.]

[Telegram—Paraphrase.]

The Acting Secretary of State Loomis to Minister Bowen, January 16, 1905.

(Referring to Mr. Bowen's cablegram of January 13, **Mr. Loomis states that Department does not understand that there are any cases for arbitration other than the Bermudez case and possibly the Critchfield, Jaurett and Olcott cases.** The Department is considering the three latter cases. Instructs Mr. Bowen to advise Department what other claims or questions there are for arbitration * * * * * * Department would be willing to submit all other claims and questions which admit of arbitration to the same tribunal that tries the Bermudez case. If this is agreed to by Venezuela, furnish list of all claims you know of, and Department will prepare protocols of submission to the same tribunal mentioned.) [Id., 1017.]

[Translation.]

The Minister for Foreign Affairs to Minister Bowen, January 16, 1905.

I have just received the first of the notes sent by your excellency to this Chancellery the 13th inst.

I have been instructed at the same time by the Provisional President of the Republic in connection with the first part of your notes, as follows: That it was only in view of conversation with your excellency and of the contents of your communication of 4th January inst. that the only way to pay the bondholders was to assign to them thirty (30) per cent. of the receipts of the custom houses of La Guayra and Puerto Cabello after the credits of the allied and pacific powers had been paid, and that the Government of Venezuela declared through me in an official communication, No. 2, dated 5th January, that it would not object to such an agreement, provided that your excellency and your Government should assist to arrive at a solution which, like that pointed out, could satisfy the provisions of Article 6 of the Washington protocols made by your excellency as the representative of Venezuela with the other powers, the contents of which, tacitly and expressly, your excellency knows, as well as the Venezuelan Government, you must have had in mind when you took the initiative in the matter to which the present note refers.

But in view of your note, which I am answering, which runs: "In answer to your note of 12th inst., I have the honor to inform your excellency that the exception made by my government in what refers to bonds and contracts should be interpreted as a declaration that my Government cannot interfere in the question of British and German bondholders," the Government of Venezuela declines to continue negotiating the point set forth by your excellency in the form I have mentioned.

In connection with the second point covered by your note, that is to say, arbitration of all the questions of judicial character which should occur between the two nations, and which, after becoming of a diplomatic character according to international laws, could not be decided by mutual agreement by the two nations, and that your excellency states now that your Government has simply taken into consideration the idea of making a permanent treaty of arbitration, etc., I must remind your ex-

cellency of the contents of the note of 11th inst., which textually runs: "Moreover, he accepts the offer of the Venezuelan Government to submit to arbitration all the questions, which, being of a diplomatic character, cannot be settled by mutual agreement."

The acceptance of such a principle is confirmed by the fact that the United States has made arbitration treaties with other nations and also by the words of your excellency, which I quote, as follows: "He desires, moreover, that all claims of the creditor powers which have not been settled should be settled by arbitration."

It would be regretted, therefore, that this principle, arbitration for the decision of such questions between the two governments, already accepted by others, presented to us by civilization and which seems so good to your excellency, should not be accepted by the United States.

The President is studying the note of your excellency of even date and also the protocol which you have the kindness to enclose to let you know his opinion in due time. [Rep. Ven. Min. For. Rel., 1905, 159.]

[Translation.]

The Minister for Foreign Affairs to Minister Bowen, January 17, 1905.

I have the honor to refer, as I informed you in my previous note, to the note which you addressed to this Department the 13th inst., enclosing a special protocol. As it can be seen in the communication that I addressed to your excellency the 5th inst., the proposition made by the Venezuelan Government to that of the United States, to which your excellency refers, deals solely with the celebration of a treaty by virtue of which all the questions of a judicial character between the two nations and which, after having assumed a diplomatic character according to international law, could not be decided by them by common consent, should be submitted to the judgment of arbitrators.

If an arbitration treaty can be made not only for one particular question, a general treaty of arbitration covering all questions seems to be most natural.

In fact, if the Bermudez case for some reasons unforseen by the Venezuelan Government, should fall within the provisions of the proposed arbitration treaty, your excellency will easily understand that your object might have been attained.

The Government of Venezuela cannot be in any way responsible for the delays in the proceedings now in course before the courts of the Republic of which your excellency complains, **because the dilatory exceptions have been taken by the other party, that is to say, by the attorney for the New York & Bermudez Company**, and as for the other delays, your excellency, who are a lawyer, knows cannot be avoided, because, if this were done, **the fact of not complying with the law would be a motive of nullity.**

Therefore, it is to be hoped that your excellency will be kind enough to lay before your Government again the true meaning of the proposition made by the Venezuelan Government to that of the United States, by which we have wished to give, and we sincerely believe to have given, a proof of the good dispositions that the Republic has in favor of the maintenance of the friendly relations it has with the Government of the United States on the basis of mutual respect, of equity and of justice.

Venezuela cannot have but the well-founded belief that the United States will admit with kindness the above mentioned purposes. [Id., 161.]

[Telegram—Paraphrase.]

Minister Bowen to the Secretary of State, January 27, 1905.

(Mr. Bowen says the Venezuelan Government was astounded to receive the protocol about Bermudez case after being assured, in conformity with Department's cable of the 9th, that it would send bases protocol

for arbitration of all disputed claims. Minister of Foreign Affairs says he sent the correspondence as to the matter to Washington by last mail. Mr. Bowen adds that the Venezuelan Government evidently think the Department's said cablegram was an invention of his; that the newspapers in Caracas are rapidly strengthening the cause of the President and increasing daily number who would resist the United States.) [H. R. Doc. No. 1, 59th Cong., 1020.]

[Telegram—Paraphrase.]

Minister Bowen to the Secretary of State, January 30, 1905.

(Minister Bowen reports that he has sent a note to Venezuelan Minister of Foreign Affairs asking if his Government will agree to the principle of an impartial arbitration of the four cases, and **suggesting if it will not that it propose to the Government of the United States that a tribunal of arbitration be selected to declare whether these and other cases of other nations are diplomatic questions** and to hear and to decide them if they are, and to fix the amount that ought to be paid out of the customs revenues to the creditor nations.) [Id., 1020.]

[Telegram—Paraphrase.]

Acting Secretary of State Loomis to Minister Bowen, January 30, 1905.

(Mr. Bowen is informed that the Department's cablegram January 28 only contemplated arbitration of four cases mentioned on their absolute merits. It could not agree to submit to any tribunal to decide whether any question is or is not a diplomatic question. That would be an innovation. When cases are submitted to arbitration on their merits only, if the tribunal decides adversely to any claimant that would show that there ought not to have been intervention in that particular case, and hence that that was not properly a diplomatic question. But if the tribunal decides in favor of any particular claimant, that shows that diplomatic intervention was just in that case. The United States Government could not agree with any government whatever to submit to a tribunal the function to pass on its exercise of the discretionary right of diplomatic intervention. Mr. Bowen is instructed to so advise the Venezuelan Government, and limit the proposed arbitration to terms stated in Department's cablegram of January 28.) [Id., 1021.]

Minister Bowen to the Minister for Foreign Affairs, January 30, 1905.

I have the honor, in compliance with instructions I have received from Washington, to request your excellency to inform me whether the Government of Venezuela is willing to agree to the principle of an impartial arbitration of the asphalt case, the Critchfield and Jaurett cases, and the revision of the Olcott award and of the trial of all those cases absolutely on their merits before arbitrators appointed to hear and to decide them.

A favorable answer to that question would, in my opinion, be indisputably creditable to the Government of Venezuela and surely acceptable and gratifying to the Government of the United States.

The only reason, if I understand clearly the views of the Venezuelan Government, why it has hesitated to submit the asphalt case and similar cases to arbitration is because it is inclined to hold that while cases are before the Venezuelan Courts they cannot be considered diplomatic questions, and that they can only become such after the courts have rendered their final decison in such a way or in such terms as to constitute a denial of justice.

If the Venezuelan Government is deterred by those views from submitting to arbitration the aforesaid cases or any of them, **I suggest that it propose to the Government of the United States that an arbitration tribunal be selected and authorized to declare whether or not the afore-**

said cases or any of them may be properly regarded as diplomatic questions, and to hear and decide such of them as are diplomatic questions.

It would not be practical nor is it necessary to submit to arbitration the general principle of international law that a case pending in a national court is not a diplomatic question. We are not discussing a general principle, but specific cases, and these specific cases can, in my opinion, be shown to be wrongfully referred to the aforesaid general principle. [Id., 1024.]

[Telegram—Paraphrase.]

Minister Bowen to the Secretary of State, February 1, 1905.

(Mr. Bowen says his note of the 30th may not be answered until the President returns February 4. He suggested that Venezuela should propose to submit to arbitration whether the cases are diplomatic in order to show that if suggestion was declined peaceable settlement is impossible, and to offer to Department an opportunity, if it is accepted, to deal a death blow to the pernicious Calvo doctrine, and to secure justice for all of the creditor nations and an equitable sum from the customs revenues. He asks if he may await the answer to his note before advising Venezuelan Government. The Department's instructions to him contemplated arbitration simply of its own four cases. Asks if that declaration should be made if Venezuelan Government rejects his suggestion.) [Id., 1021.]

[Telegram—Paraphrase.]

Acting Secretary of State Loomis to Minister Bowen, February 2, 1905.

(States that the Department is unable to submit to arbitration the question whether cases are or are not diplomatic, but Mr. Bowen may use his discretion about communicating this government's position to the Venezuelan Government.) [Id., 1022.]

[Telegram—Paraphrase.]

Minister Bowen to the Secretary of State, February 2, 1905.

(Mr. Bowen reports he has just received the answer to his note. The President declines to arbitrate the four American cases and to submit to arbitration whether pending questions are diplomatic or not and finally to permit a tribunal of arbitration to fix the sum that should be paid out of the customs revenues. He asks again for a treaty of arbitration for settling questions that may become diplomatic.) [Id.]

[Translation.]

The Minister for Foreign Affairs to Minister Bowen, February 2, 1905.

I beg to acknowledge receipt of the note of your excellency of 30th of January last, and I have been instructed by the Provisional President of the Republic to answer in order the points which it covers in the following terms:

The asphalt cases have been fully answered to your excellency in previous notes from this Department, it being mentioned in the contracts between the interested parties and the Government of the Republic that all doubts and controversies which should arise in their execution and fulfillment would be decided by the Courts of Justice of the Republic and in no case will they be a matter of international claims, and your excellency, being a lawyer, will easily understand that it would not be honorable for the Venezuelan Government to violate such a condition stipulated with American citizens and companies.

The Jaurett case is a mere police question; and in what refers to the revision of the decision in the case of Mr. Olcott, although no protest from him on the subject is known, this case would be, in the opinion of the Federal Executive, of much gravity, if it were done, as he considers that the protocols that your excellency signed in Washington in the

name and as the representative of the Venezuelan Government would be annulled. It would not be in any way honorable for the Government of the Republic to accept such a proposition.

If a judicial question could be taken away from the competent courts which are taking cognizance of it to be submitted to a diplomatic decision as your excellency has asserted in your various notes, the Venezuelan Government would not have any difficulty in agreeing to your repeated petitions, provided that this principle should be thus maintained, supported and provided for in the international code of nations.

The Government of the Republic has not been able in the least to foresee a case of a denial of justice, because the cases which are being debated are of such a character that they do not call for such conclusion, nor much less would it be acceptable to the Federal Executive, since it would involve the honor and dignity of the nation.

Your excellency knows, through the contents of previous notes from this Department, that the Venezuelan Government has proposed in every sense to that of the United States a general arbitration treaty for all the questions that in due international form can thus be decided. And with reference to this paragraph of the note of your excellency that I am answering, the President remarked that the mere fact of submitting to arbitration the decision of whether a question is a diplomatic one or not, would be proof not only that it was not, but it would be, moreover, prejudicial to an exact investigation of the questions on the part of the chancelleries which should discuss them. It cannot be understood either that those special cases your excellency refers to may be governed by other principles or rules which should not be general ones.

The following paragraph of the note of your excellency is of such magnitude and gravity that in the case of your excellency I have to say that the Federal Executive cannot understand it or explain it, since your excellency, who was Venezuela's representative at one time, should know what is the amount that, since the date of the protocols, is being paid to all the claimants, that is to say, to all the nations which signed with Venezuela diplomatic treaties. One point which the Government of the Republic was not in a position to decide, that of preference, **your excellency also knows that it was decided in a clear and categorical manner by the Hague Tribunal and this decision has been and is being fulfilled by the Venezuelan Government.**

If a new agreement or treaty, in what refers to the form of payment, but not with reference to the amount, could be obtained by the Government of the United States from the other nations in behalf of Venezuela, such payments would be equally acceptable. I have to remark again to your excellency that the Venezuelan Government has no pending questions of any kind with the other governments in connection with what your excellency mentions in the paragraph which I have been referring to. [Rep. Ven. Min. For. Rel., 1905, 168.]

[Telegram—Paraphrase.]

Minister Bowen to the Secretary of State, February 3, 1905.

(Mr. Bowen states that the President asks for a general treaty of arbitration for settling questions that may become diplomatic in accordance with the rule of international law. Asks if the Department wishes him to decline foregoing request or to inform the Venezuelan Government that the Government of the United States could not agree to submit to arbitration whether or not pending questions are diplomatic.) [H. R. Doc. No. 1, 59th Cong., 1022.]

[Telegram—Paraphrase.]

Secretary of State to Minister Bowen, February 3, 1905.

(Mr. Hay states that the suggestion that the United States enter into a treaty of arbitration to determine what questions may become diplomatic

can not be taken seriously. Mr. Bowen will so inform the Venezuelan Government. [Id.]

[Telegram—Paraphrase.]

Minister Bowen to the Secretary of State, February 5, 1905.

(Reports that the Venezuelan chargé d'affaires cabled the President yesterday that the Department said the difficulties with Venezuela could be arranged. The President cabled for details. The Venezuelan chargé d'affaires replied that Department asked him why does not the President accept a general arbitration treaty, adding, if he would, all would be settled amicably and Venezuela would never have a better friend than the United States. **The President cabled back to tell Department that he never asked for anything except to submit everything to arbitration, but that Mr. Bowen prevented everything.** Mr. Bowen says that statement is false. The President refused to submit to arbitration pending questions and asked for a general arbitration for the future. **Mr. Bowen adds that Department instructions to him stated the United States would consider negotiating a general arbitration treaty only after pending questions are settled.** As the President claims cases before his courts are not diplomatic questions, it would be useless to make a general arbitration treaty unless he accepts the Department's definition of a diplomatic question.) [Id., 1023.]

[Telegram—Paraphrase.]

The Secretary of State to Minister Bowen, February 6, 1905.

(Mr. Hay states that the Venezuelan chargé was informed there could be no settlement which did not provide for prompt arbitration of pending questions. **He was distinctly told that a general arbitration treaty as proposed by Venezuelan Government would be unacceptable at this juncture.** [Id., 1025.]

Minister Bowen to the Minister for Foreign Affairs, February 6, 1905.

In answer to your note of the 2nd instant I have the honor to inform you that the Government of the United States declines to make any settlement which does not provide for the prompt arbitration of pending questions, and deems the request of the Government of Venezuela for a general treaty of arbitration unacceptable at this juncture. [Id., 1026.]

[Telegram—Paraphrase.]

The Secretary of State to Minister Bowen, February 13, 1905.

(Mr. Hay instructs that no action be taken in Critchfield or the United States and Venezuelan Company case until further instructed.) [Id., 1025.]

[Telegram—Paraphrase.]

Minister Bowen to the Secretary of State, February 10, 1905.

(Mr. Bowen states that on the 6th he answered the last note of Minister of Foreign Affairs by stating simply that the United States declines to make any settlement which does not provide for prompt arbitration of pending questions, and that general arbitration treaty is unacceptable at this juncture. **The Venezuelan Government has not replied except by fortifying mountain passes to the coast and sending extra forces and ammunition to La Guaira.)** [Id., 1026.]

Minister Bowen to the Secretary of State, March 4, 1905.

I have the honor to enclose herewith a copy of my last note about arbitration to the Minister of Foreign Affairs, and copies of the telegrams that have passed between Washington and this legation since the 5th of February last.

The fact that the correspondence about arbitration ended by the sending of President Castro's "most cordial thanks" to me for my good offices (see Foreign Office note of February 2nd) is very significant. It proves that he did not take the correspondence seriously and attached but little importance to it. It seemed to me, however, very necessary to have our record in good shape, so that if we use force we may easily prove that we are justified in so doing.

The rumor that President Castro was fortifying the mountain passes and preparing to fight the United States is now known to be untrue. At no time has the President believed that trouble was imminent with the United States. * * * * *

In case action is taken here I respectfully request that a naval officer be attached to this legation. Captain Parker, the military attaché, is doing excellent work here, and I beg that he be allowed as long as you continue me at this post to remain with me. [Id.]

The Secretary of State to Minister Bowen, March 10, 1905.

I have to acknowledge the receipt of your No. 385, of the 5th ultimo, in regard to the pending negotiations between the United States and Venezuela.

In reply I have to say that the Department approves your opinion that we should not make a general arbitration treaty with Venezuela until all pending questions between the two governments have been settled in conformity with the Department's instructions heretofore given. In the light of President Castro's statement to you, contained in the note of the Minister of Foreign Affairs of February 2, "the very fact of submitting to an arbiter the decision as to whether a question is diplomatic or not would be not only a proof that it was not, but even prejudicial to the exact investigation of the questions by the chancelleries that are to discuss them." This language of the President completely demonstrates the futility of proposing or discussing the formation of an arbitration treaty for the purpose of deciding the question whether a case is diplomatic or not. In short, the language quoted shows the inability of this government to accede to any arbitration of the question proposed. Taking the Bermudez Asphalt Company case as an example, if the question were submitted to a tribunal to decide whether or not the case is diplomatic, it **would involve the presentation before an international tribunal of many details in connection with prosecutions instituted against the Bermudez Company which this government would wish to be spared the necessity of presenting.** Incidents such as have characterized the successive prosecutions of the Bermudez Company were fully considered by the Department of State before it determined whether or not the Government ought to intervene with the Venezuelan Government for the protection of the Company. Once its decision to intervene is taken and an arbitration arranged, the case then goes to the tribunal on its merits, and it would be very inconvenient, since it might lead to recriminations creating resentments if the intervening government had to show the many serious charges and proofs adduced that the Executive had overawed the courts and by removals and imprisonments of judges and of attorneys and by interposing other obstacles to the due and impartial administration of justice had thus finally convinced the intervening government of the propriety and necessity of its action. Expositions and discussions of this nature would not conduce to the maintenance of that mutual respect and friendship which should continue in spite of serious controversies between differing governments.

The revision of the Olcott award could not have the serious consequences supposed in the note of the minister addressed to you on February 2. The protocol for the revision of that award would be so drawn that the action of the reviewing tribunal would have no effect on the previous protocols and awards. It would have the effect, however, and

this the Department asks, that the tribunal might fairly and fully reconsider the whole case and render to Mr. Olcott that justice which appears to have been denied by the award given under the previous protocol.

The attitude of the Venezuelan Government toward the Government of the United States and toward the interests of its citizens who have suffered so grave and frequent wrongs arbitrarily committed by the Government of Venezuela require that justice should now be fully done, once for all. If the Government of Venezuela finally declines to consent to an impartial arbitration, insuring the rendition of complete justice to these injured parties, the Government of the United States may be regretfully compelled to take such measures as it may find necessary to effect complete redress without resort to arbitration. The Government of the United States stands committed to the principle of impartial arbitration, which can do injustice to nobody, and if its moderate request is peremptorily refused it will be at liberty to consider, if it is compelled to resort to more vigorous measures, whether those measures shall include complete indemnification, not only for the citizens aggrieved, but for any expenses of the Government of the United States which may attend their execution.

You are at liberty to furnish a copy of this instruction to the Minister of Foreign Affairs. [Id., 1027.]

[Translation.]

The Minister for Foreign Affairs to Minister Bowen, March 23, 1905.

I limit myself to acknowledge the receipt of the note of your excellency of 19th inst. as well as of the enclosed copy of a communication of his excellency, John Hay, of the 10th inst., the Venezuelan Government sincerely believing not to have actually any pending questions with the United States, it being an obvious fact from all the evidence that the Venezuelan Government settled in Washington by the protocols signed in 1903 the questions that might be a matter of discussion and which were decided by the mixed commissions which met later in Caracas.

On the other hand, one of the questions mentioned by his excellency, Mr. Hay, is comprised in those awards, which is, as we would say, a matter already decided upon, and as the Government of Venezuela would take as an offense to the honor of the Dutch nation and of the umpire, Mr. Harry Barge, who was the one who decided in the Olcott claim, it would not be possible to accede to such an unreasonable demand without failing in the respect due to what has been agreed upon, and it would be at the same time a reason to believe that a new agreement, decision or arbitration could not be fulfilled either; also his excellency, Mr. Hay, should know that the New York and Bermudez Company case is by its nature one of those which falls under the ordinary justice of the country, the laws of which have been recognized, and to which laws all those of foreign nationalities who come to live and to contract in it have to submit.

The Provisional President of the Republic instructs me to inform your excellency in order that you may communicate it to his excellency, Mr. John Hay, that the Government before considering your note wants to know whether the matter under discussion is the sovereignty and independence of the Republic, that is to say, if the Government of the United States respects and acknowledges the legislation of the Republic and the honor of its courts, and if it equally respects and recognizes the agreements and awards of arbitration which it itself contracted in the name of the Venezuelan Government. [Rep. Ven. Min. For. Rel., 1905, 173.]

Minister Bowen to the Secretary of State, April 2, 1905.

I have the honor to inclose herewith a copy of the answer of the Minister of Foreign Affairs to your note of March 10 and a translation of the answer.

As my correspondence with the Government in regard to arbitration ended in an absolute refusal on the part of President Castro to favor any of my suggestions, and was interpreted by him as evidence that I was attempting to impair the good relations existing between the United States and Venezuela, I decided to submit to him a copy of your note of March 10, in order that he might have the opportunity to ponder carefully your views and conclusions, and to answer them without being influenced by any feeling of personal animosity, as he may have been when he replied to my notes. That he failed to avail himself of that opportunity is very apparent. **The whole tone of his answer to your note is exceptionally impetuous, while the arguments he employs are distinctly disingenuous and obviously absurd.** * * * [H. R. Doc. No. 1, 59th Cong., 1029.]

[Telegram—Paraphrase.]

Acting Secretary of State Loomis to Chargé Hutchinson, May 22, 1905.

(Mr. Hutchinson is instructed to inform Department if there has been a recent decision in asphalt case.) [Id., 980.]

In July, 1905, the President appointed a Special Commissioner, Hon. William J. Calhoun, of Chicago, "to examine fully into the situation in Venezuela and report to the President exactly what the differences are between Venezuela and the United States and other foreign powers, and also what has been arranged for the other foreign powers that in any way conflicts with the interests of the United States. He is also to examine, although necessarily in a rather general way, into the complaints made by American companies as to the conduct of the Venezuelan Government and report to the President exactly as to what the equities are in these cases."

Judge Calhoun proceeded to Caracas, where he arrived on August 14, 1905, and remained until October 2, 1905. He received a friendly welcome at the hands of the officials of the Venezuelan Government and was afforded the greatest facilities for prosecuting his inquiries. He was given access to all records and documents in all the departments of the Government and was aided in every way possible. Nothing was left undone in allowing him the greatest freedom in acquiring information from which he could form a clear and impartial judgment regarding the matters he was sent to investigate.

Upon his return to the United States he made his report which, up to the present time, has been jealously guarded among the secrets of State. The following letter of Secretary Root gives a hint as to its contents:

The Secretary of State to Minister Russell, November 10, 1905.

I have just telegraphed you as follows: "Reply to your dispatch of October 20 has been withheld pending conferences with representatives of Bermudez Company. Clyde Brown, representing that Company, is now going to Caracas for the purpose of settling differences with Venezuelan Government if practicable. Do what you can to promote fair and reasonable settlement."

I was not willing to undertake to answer the questions of your dispatch of the 20th directly, because by doing so I might seem to be taking upon the shoulders of this Government the negotiation of a settlement which, in my view, ought to be undertaken by the Bermudez Company itself. It is, however, the wish of the State Department to render every proper assistance within our power toward bringing any negotiation between the Company and the Government of Venezuela to a conclusion which will be in accordance with substantial justice.

Prior to Mr. Calhoun's visit to Caracas the Department had, necessarily, to proceed upon statements by interested parties regarding a great mass of facts, and these statements, although made in entire good faith, were of course liable to be colored by the feelings and opinions arising from self-interest and from the long-continued and heated controversy. Mr. Calhoun's mission was, as you are aware, to secure an unbiased and dispassionate view of the entire field of the controversy, and all the acts and proceedings affecting the interests of the New York and Bermudez Company. Mr. Calhoun has not yet made his report. He has brought with him upon his return a great mass of notes from which he is now engaged in the preparation of the report. An informal conversation with him, however, immediately following his return, has produced upon my mind an impression that when the report is submitted it will appear that there were questions between the Company and the Government of Venezuela appropriate for judicial decision, and upon the raising of which a situation was presented calling for an equitable adjustment of differences, and which cannot properly be disposed of by a simple demand based upon the idea that all the right is on one side and all the claims of the Bermudez Company unimpeachable.

I have also a strong impression, derived from the same conversation with Mr. Calhoun, that the litigation in which these matters of difference have been dealt with has been conducted in an exceedingly harsh manner, and that, without undertaking to consider any question of technical legal right which may have been the subject of decision, the result has been a degree of injustice toward the Company, which I have great confidence the Government of Venezuela will recognize and remedy if the subject can be approached in a spirit devoid of that controversial and unfriendly quality which has hitherto characterized the treatment of it, owing, perhaps, to a considerable degree to the attitude taken by the Company itself.

The proceedings by which the Company has been deprived of the major part of its property have been, in their essence, proceedings for forfeiture. Passing by the question whether upon technical legal grounds there exists sufficient cause to sustain legitimate forfeiture, we may well urge upon the Government of Venezuela that it is hardly consistent with that sense of justice which should control nations in their treatment of all persons who subject their property and property rights to the control of national power to press causes of strict forfeiture beyond the actual injury done and to inflict losses wholly incommensurate with the occasion. You are familiar with the growth of equity jurisdiction under our own system of jurisprudence, having its origin in a sense of the injustice frequently wrought by perfectly unimpeachable legal judgments and in the desire of the sovereign to relieve unfortunate suitors from undue forfeitures and penalties and other harsh results following from the strict letter of the law. It is perfectly competent for the Government of Venezuela to deal with the affairs of the Bermudez Company in this spirit of equity without in any degree admitting an impeachment of the validity of the judgments of the Courts of Venezuela. It is especially easy for that Government to deal thus with a case in which the Government itself is the complaining party, for the complainant who has recovered a judgment can always limit its operation and rest satisfied with such degree of enforcement of it as he deems to be just. I wish you to urge upon the Government of Venezuela such a treatment of the present situation

as being due to that sense of justice which should control the action of a great and powerful government and to that reputation for justice which every civilized nation prizes so highly.

There has been much evidence produced to the Department upon which the New York and Bermudez Company makes claims relating to the proceedings against them which will not be taken up for consideration until the submission of **Mr. Calhoun's report and which I hope, by reason of the settlement of the matters in controversy along the lines I have described, may never require further consideration.** [H. R. Doc. No. 1, 59th Cong., 1002.]

Mr. Brown's efforts to compromise with Venezuela were unsuccessful, and the State Department suspended further diplomatic representations to that Government until February 28, 1907, when, in a letter signed by the Secretary of State, but couched in language directly at variance with his letter of Nov. 10, 1905, the whole matter was re-opened. As this letter gives in complete detail the arguments which have been put forth on behalf of the various claimants and epitomizes the position of the State Department, it is reproduced in full, as follows:

[Translation.]

The Secretary of State to Minister Russell, February 28, 1907.

The State Department has made a most careful re-examination of the cases hereinafter mentioned, in which American citizens demand reparation for injustices suffered at the hands of Venezuela.

You are instructed to again call the attention of the Government of Venezuela to these cases, and to urge before said Government the reasons which exist in each case for favorable action, as these reasons are now once more exposed with fuller and more defined knowledge and more precisely than has been possible hitherto.

You will call the attention of the Venezuelan Government to the fact that, notwithstanding the long and uninterrupted friendship shown by the United States to Venezuela; notwithstanding the repeated occasions on which the United States have intervened to free Venezuela from disagreeable and dangerous complications with other foreign powers; notwithstanding the patience and consideration which have ever characterized the action of this Government towards Venezuela, the Government of Venezuela has confiscated or practically destroyed, within the last few years, all the substantial interests and properties of Americans in that country. This has been done sometimes in accordance with the forms of law and in contradiction to the spirit of the law; sometimes without even the formalities of the law, through some expedient or other, with the action of the Government ever hostile, to all appearances, to the American interests to such an extent, that there is practically nothing left of the many millions of dollars invested in that country by American citizens.

The first specific claim which is to be submitted again to Venezuela arises from the arbitrary and apparently illegal expulsion of the American citizen, A. F. Jaurett, who was notified by the Venezuelan authorities on the afternoon of Saturday, November 12th, after the hours on which business closes, that he was to leave Venezuelan territory.

The reason assigned by the authorities for the expulsion of Mr. Jaurett is, that he was notoriously prejudicial to public order. On the following morning, that is, on Sunday, the Prefect of Police called upon Mr. Jaurett and formally ordered him to leave Venezuelan territory within twenty-four hours. Although Mr. Jaurett endeavored to obtain a modi-

fication of this order, so as to be able to arrange his business, and although the representative of the Government of the United States accompanied him and seconded this reasonable request, the Venezuelan Government refused to grant such an extension. Mr. Jaurett was, therefore, compelled to leave the country on Monday morning, in obedience to the order of the Governmental authorities of Venezuela, leaving his properties without an opportunity having been given to him to arrange and settle his business matters.

The Government of the United States does not dispute nor deny the existence of the sovereign right to expel an undesirable inhabitant. It can not be ignored, however, that such a right is of a very high character and that the justification must be very great and convincing. Otherwise residence in a foreign country would be neither safe nor profitable, as expulsion could at any time deprive a resident of the legitimate rewards of a lifetime. Therefore, although the existence of this right is not denied, the exercising thereof should be limited. The act is in itself sufficiently violent. The manner and method of the expulsion must not be humiliating, for the purpose is not to humiliate or hinder the expelled resident, but to save the State from the dangers attending the residence of an undesirable foreigner.

It can not be too much urged, that the person who is to be expelled should be given an opportunity to explain the misbehavior of which he is accused, and that an opportunity should be given to him to settle his business matters, so that the expulsion would not necessarily carry with it a loss of properties. In no case should an expulsion be decreed nor executed after closing hours on a Saturday, unless the presence of the undesirable resident be so dangerous for the community that the simple delay until after Sunday should threaten serious consequences for the State.

It is not asking too much that a Government that exercises the sovereign right of expulsion, should explain the reasons of such expulsion to the Government of the country of which the expelled person is a subject or a citizen, for a nation is offended by an offense against one of its citizens, and an unprovoked attack upon him or an insult done to him necessarily affects the Government of his country. This, at the same time that it would appear to be required by international courtesy, is prescribed by international law.

It is unnecessary to quote any opinions on this subject. However, attention is called to the report submitted by the late Mr. Rolin-Jacquemins to the Institute of International Law concerning the right of expelling foreigners. If it is borne in mind that this report was submitted in reply to an enquiry of the Institute of International Law regarding an examination of the question in what manner and within what limits governments may exercise the right to expel foreigners, and if it is further remembered that Rolin-Jacquemins was not only an authority on international law, but was also a Minister of State, accustomed to deal with intricate questions of international law, it becomes at once obvious that the report gives not only the theory but also the usages and customs of international law on this subject.

"The right to prohibit the admittance into territory or to exclude from same all individuals who may be foreign to the political community is a direct consequence of territorial sovereignty. But as regards the principle of territorial sovereignty there are other principles that tend, not to annul it, but to restrict the exercise thereof, and about which it is desirable to establish a set of positive rules. The first of these principles is that every State forms a part of the community of nations, the whole of which forms humanity. As such, it is not allowed to isolate itself nor to isolate its territory from all contact with the rest of the world. By proceeding in this manner, it would place itself beyond the pale of the law and outside of the community of nations and would be exposed to an ex-

propriation in the cause of the interests of humanity. The consequence of this principle is that a State can not forbid in an absolute manner access to its territory to all foreigners, nor expel indiscriminately, or in a mass, all those that may find themselves therein. Besides these general duties towards humanity and towards the community of nations, there are some special duties which are applicable to the exercising of the right of expulsion and which are founded on the fact that the individual expelled has the double character of a citizen and a man. In his character as a man, he has the right not to be the object of undue severity nor to be unjustly harmed in his interests. In his character as a citizen of another State, he can claim the protection of his sovereign against such severities or spoliations. The State which expels, acting thus by virtue of its own sovereignty, is the sole judge of the motives which dictate the measure. It does not follow that these motives are indifferent nor that the right of expulsion may be a pretext for arbitrary violence."—(Review of International Law, Vol. 20, p. 498.)

This report says in conclusion:

"From the point of view of international law, every government of a sovereign State has, as a general rule, if it deems it necessary in the interest of such State, the right to admit or not, to expel or not, foreigners desiring to enter or who may be on its territory, as well as to submit their admittance or their residence to such conditions as it may deem necessary in the interest of its peace or of its safety. The exercising of these different rights is however subjected to the following restrictions. Among which it says:

"1. No State may, without placing itself beyond the protection of international laws, forbid in an absolute manner access to its territory to all foreigners, nor expel indiscriminately, or in a mass, all those that may be in it.

* * * * * * * * *

"4. The right of expulsion and the mode of exercising this right may be regulated by international treaties.

"5. But, failing such treaties, the State to which belongs the individual expelled has the right to know the motives for the expulsion and communication of these motives may not be denied to it. Further, the expulsion must be effected with all the consideration demanded by humanity and with respect to rights acquired. Excepting in urgent cases, the individual expelled must be given a reasonable time in which to arrange his affairs. Finally, excepting in cases of extradition, he must be allowed to choose the point of the frontier through which he prefers to leave the country."

The right of a government to protect its citizens in foreign parts against a violent and unjustified expulsion must be looked upon as an established and fundamental principle of international law. It is none the less established and fundamental that a government may demand satisfaction and an indemnity for an expulsion effected in violation of the requirements of international law. The cases which announce this right are so numerous that it would be idle to enumerate them. It may be permitted, however, to call the attention of the Venezuelan Government to a case so similar to that of Mr. Jaurett's, that in order to distinguish them it would be necessary to be a casuist of high decree. The case in question is that of Boffolo versus Venezuela, and it was tried before the Italo-Venezuelan Commission in 1903. The award of the arbitrator may be summarized as follows:

"A State has the general right to expel; but——expulsion should not be resorted to excepting in extreme cases and should be effected in a manner least injurious to the person affected.

"The State exercising the faculty must, when occasion demands it, explain the reason of such expulsion before an international tribunal, and

if an insufficient reason or no reason at all is given, it accepts the consequences.

"As the only reasons given in the present instance are contrary to the Venezuelan Constitution, and Venezuela being a country not despotic but of fixed laws, the arbitrator cannot accept them as sufficient."

It appears therefore, that not only are the authors of the theory agreed, but that awards, carefully considered and meditated upon by tribunals of international arbitration, approve and apply the theory of international law to the question of expulsion. Therefore, at the same time that international law does not justify the expulsion of Mr. Jaurett and at the same time that the method and the manner of his expulsion were both violent and inconsiderate, not to say inhuman, there is another reason why Mr. Jaurett should not have been summarily and ignominiously expelled, and that is, that the Venezuelan Constitution forbade such an expulsion and that the actual expulsion was an infraction of the constitutional law of Venezuela.

The decree of the Federal Executive which expelled Mr. Jaurett was based upon Article 80, Section 22, of the Venezuelan Constitution, by virtue of which the President is authorized to prohibit, at his own discretion, the entrance of foreigners into Venezuelan territory, or to expel from Venezuelan territory foreigners not having an established domicile in the country. A residence of two years is sufficient to establish a domicile in Venezuela, and Mr. Jaurett had resided there for a period of eight years; he had established himself permanently; he was engaged in commercial operations and he had fully complied with the requisites of the law. The provisions invoked by the Executive were not applicable to him, because he was a domiciled foreigner, not a foreigner in transit.

In order to justify, by constitutional law, the expulsion of Mr. Jaurett, the Venezuelan Government has referred to Article 80, Section 8, which gives to the President the right, "in cases of foreign wars or domestic disturbances, or armed rebellion against the institutions, after public order has been declared to be disturbed and only during the period of such disturbance, to arrest, confine or expel from the territory of the Republic, native citizens or foreigners who hinder the re-establishment of peace." It is at once evident that these clauses are restricted in their application to cases of foreign wars, domestic disturbances, armed rebellion or hindrance to the re-establishment of peace. As in the case of Mr. Jaurett there existed none of these motives for Executive action, they are inapplicable.

The expulsion of Mr. Jaurett is, therefore, as unjustifiable according to the principles of the constitutional law of Venezuela as it is undefendable according to the learned theory and practice of international law.

In view of the authorities and precedents, the claim of Mr. Jaurett was recommended to the Department and the attention of the Venezuelan Government has been called to all the circumstances of the case and an indemnity has been asked for.

Mr. Jaurett had been domiciled in Venezuela during many years, he had acquired property which was lost to him totally or in part through the unjustifiable action of the Venezuelan authorities in expelling him from Venezuela without giving him an opportunity to close his business and prevent his financial ruin. Mr. Jaurett sets his losses at $25,000 and the Government of the United States, finding the claim reasonable, has asked the payment of it from the Venezuelan Government. Until now the Venezuelan Government has not given to this claim the care and attention which the Department of State believes it is entitled to. Delay has taken the place of argument and the Department of State thinks that the time has arrived to settle the indemnity.

You are, therefore, instructed to present, courteously but firmly, the claim of Mr. Jaurett to Venezuela and to insist that the payment be no longer delayed of a claim so just in the light of international law.

2. The claim of the Orinoco Company is one with which the Venezuelan Government has been acquainted for twenty years or more. During many years contesting claimants appeared before the Venezuelan authorities to maintain their right to different portions of the territory by virtue of contrary and incompatible concessions. The Venezuelan Government has annulled on various occasions, by Executive Decree, rights of concession; the Courts of Venezuela have maintained that such Executive proceeding could not remove rights granted to claimants by acts of the Federal Congress and upon a recent and solemn occasion, that is, by award of the Mixed Commisison on American-Venezuelan Claims, in accordance with the Protocol of the 17th of February, 1903, the several acts of the Venezuelan Executive which violated the rights of the claimants were declared null and void and of no effect.

In view of these circumstances, therefore, it is unnecessary to make an extensive examination of the basis of the claim, but in order to call the attention of the Venezuelan Government to the justice of the claim and to the long sufferings of the claimants, patiently borne, certain facts are here named:

On the 22nd of September, 1883, the Government of Venezuela granted to Cyrennius C. Fitzgerald, his associates, assigns and successors, for a term of ninety-nine years, a concession of a certain portion of the Delta of the Orinoco with the exclusive right to exploit the resources of the territory granted, which was national property. This concession was approved by Congress on the 27th of May, 1884, and on the 14th of June, 1884, Fitzgerald transferred to the Manoa Company, Limited, the whole concession with all his rights in accordance therewith.

On the 1st of January,1886, General Guzman Blanco, Envoy Extraordinary and Minister Plenipotentiary of Venezuela in various European Courts, made a contract with George Turnbull, an American citizen, for the region previously granted to Fitzgerald, but this contract was "to become in force in case that the contract made with Mr. Cyrennius C. Fitzgerald on the 22nd of September, 1883, for the exploitation of the same territory should become void for failure to fulfill same within the time specified."

By a resolution of the Executive and of the Federal Council, dated September 9, 1886, the Fitzgerald contract was declared insubsistent and no longer in force, and on the following day the contract with Turnbull was ratified by the Executive and the Federal Council and approved by Congress on the 28th of April, 1887.

Setting aside minor matters, it appears that on the 28th of May, 1895, the Manoa Company, successor to the rights of Fitzgerald, petitioned the Government to recognize and re-affirm by decree its rights and proprietorship over the whole Fitzgerald concession and the President of the Republic on the 18th of June, 1895, declared the cancellation of the concession granted to Turnbull, the Government giving out a decree on the same day, ratifying and re-affirming the original Fitzgerald concession transferred to the Manoa Company, and authorized said Company to resume its work of exploitation and development.

On the 17th of October, 1895, the Manoa Company transferred all of its concession to the Orinoco Company and the President of Venezuela recognized on the 20th of November, 1895, the validity of the transfer made by the Manoa Company.

Passing from unimportant operations, it appears that on the 10th of October, 1900, the Chief Magistrate of the Republic, by a resolution of that date issued through the Minister of the Interior, declared the Fitzgerald contract of September 22nd, 1883, upon which the Company based its rights, to be insubsistent and void, and that the decree of June 18th, 1895, which ratified the contract after it had been annulled by the decree of September 9, 1886, was inefficient without a new contract was made, which had not been done; and on the 14th of May, 1901, the Government

of Venezuela published an extract of a certificate of the register of the archives, which declared and certified that the title of proprietorship had belonged solely to Turnbull since the 13th of May, 1888, on which date it was granted, until the 14th of May, 1901.

Such was the condition of things when the Claim Commission of the United States and Venezuela was organized in conformity with the Protocol of the 17th of February, 1903. In view of the fact that the various claims and counter claims based upon the operations since the 22nd of September, 1883, until the date of the Commission, were submitted to the Commission and by it examined, and that the judgment of the Commission was as obligating for Venezuela as for the claimants, and in view, furthermore, that the award of the arbitrating tribunal in favor of the Manoa Company is a public document, it is unnecessary to do more than call the careful attention of the Venezuelan Government to the decision of the Commission.

It must be stated, however, that the Court maintained openly that a right conferred to the claimants by an act of the Federal Congress of Venezuela could not be vitiated nor destroyed by the decree of the Venezuelan Executive; that the cancellation of a concession thus granted and protected was a matter for judicial and not political action. The effect of the decision of the Court was, therefore, to re-establish the Fitzgerald concession and to transfer to the Orinoco Corporation, as the cessionary of the Orinoco Company, all the interest of the original concession of September, 1883.

The rights of the Orinoco Corporation, however, recognized and protected as they are by the decision of an international tribunal, do not depend solely upon the award of this tribunal, for on the first day of March, 1906, the Federal Court of Venezuela openly maintained, in an action brought by a certain Juan Padron Ustariz to declare the Fitzgerald contract insubsistent, that a contract once properly made could not be annulled by an Executive Decree.

It appears, then, that the Orinoco Corporation finds itself in the enviable position of having had its rights recognized by an international tribunal and by the highest constitutional Court of Venezuela.

Notwithstanding these solemn adjudications and during the pendency of the action before the Federal Court of Venezuela, the Venezuelan Government granted on the 2nd of January, 1906, to a Venezuelan citizen, a part of the territory which was comprised within the Fitzgerald concession. And it may be said, by the way, that this concession of 1906, notwithstanding its complete illegality, was officially recognized by the Venezuelan Government as recently as the 12th of January, 1907. On the 5th of January, 1906, a second concession was granted, contrary to the rights of the Orinoco Corporation. On the 20th of February a third concession of territory within the Fitzgerald concession was granted, and on the 7th of March, one week after the decision of the Court, the Venezuelan Government granted another concession of property situated within the Fitzgerald concession.

In view of the circumstances of this case, the repeated favorable adjudications which settle the question of title and surely give it to the claimants, it would appear that these acts of the Venezuelan Government are clearly unjustifiable. The repeated concessions of territory within the Fitzgerald concession show the purpose either to prevent the Company from exploiting the concession, or to destroy the concession by means of concessions incompatible with its existence. It is unnecessary to say that the Orinoco Corporation cannot undertake the exploitation of its concession while its title is thus opposed, and the constant and repeated concession by the Venezuelan Government of its rights, acquired in violation of international and national sentences, offers but little stimulus to the investment of work and capital in the development of its property. The Company has sought relief in the Courts and overcome oppo-

sition. The Company cannot enter into a conflict with the Executive of Venezuela.

In view, therefore, of all the facts stated, you are instructed to ask the Venezuelan Government to consent to submit at once to a tribunal of the Permanent Arbitrating Court of the Hague (unless another tribunal is agreed upon) and of which no native of the one or the other country or of any country interested in the controversy forms a part, to consider and determine

1—Whether the contract rights of the Orinoco Corporation have been destroyed or the value of its concession has been decreased or destroyed by the unjust acts of the Venezuelan Government, its officials and agents.

2—Whether any loss has been caused to the Manoa Company, Limited, the Orinoco Company, Limited, and the Orinoco Corporation, or to any one of them through unjust opposition or usurpations against them while they have been in the partial or entire enjoyment of their contract rights in the Fitzgerald concession.

And to adjudge, in consequence, damages, payable in American gold, bearing interest from the date of the award until payment thereof, and with authority for the tribunal to determine the time and manner of payment of such damages.

You are also instructed to ask that pending the arbitration all proceedings be suspended in the action which, it is said, has been recently brought by the Venezuelan Government against some of the aforesaid companies to annul or cancel the said Fitzgerald concession, and that the *status quo* be maintained.

3—The third claim is that of the Orinoco Steamship Company, constituted on the 31st of January, 1902, in accordance with the laws of New Jersey to acquire and assume "as a current enterprise, the business now being carried on by the Orinoco Shipping and Trading Company, Limited, of London, England." This latter Company was constituted in England on the 14th of July, 1898, and the Orinoco Steamship Company appears as the cessionary of any rights which the Orinoco Shipping and Trading Company, Limited, had acquired. The English Company itself was organized to acquire property in Venezuela, including concessions and to do the business of transportation by steamer. The capital of this Company was $100,000 and all of it, with the exception of seven statutory shares, was owned by American citizens. As the present Orinoco Steamship Company is owned and entirely managed by these American citizens, it will appear that the claim was amply American at its beginning, and is now totally American.

On the 12th of December, 1898, the Shipping and Trading Company acquired by purchase all the assets of two Venezuelan corporations. Among these there was a privilege of unquestioned validity known by the name of the Grell concession, which stipulated the establishment of a regular steamship line between Ciudad Bolivar and the Ports of Curacao and Trinidad, British Antilles, and included permission to navigate the Macareo and Pedernales channels of the Orinoco River, notwithstanding that the general laws of Venezuela prohibited vessels doing foreign business with Ciudad Bolivar from navigating through any other portion of said river than its Boca Grande (Large Mouth). This concession was to have a duration of fifteen years. The transfer of this concession to the Navigation Company was recognized and approved by the Venezuelan Government by Executive decrees dated October 18, 1898, and September 4th, 1899.

It appears further that the Venezuelan Government was indebted at the time to the Navigation Company, as the cessionary of the Orinoco Red Star Line, one of the Venezuelan Corporations above referred to, in the alleged sum of $77,818.01 and in the other alleged sum of $476,732.50 for services rendered to the Government, for which proper accounts had been rendered and which were neither questioned nor disputed, and that the Venezuelan Government made a contract with the Navigation Company on the 10th of May, 1900.

According to the terms of this contract, the Government paid (bs. 100,000) one hundred thousand bolivars ($19,219.19) and agreed to pay 100,000 bolivars more, and granted an extension of the concession held by the Navigation Company for another period of six years, that is, until 1915. The Company in exchange considered as received the full payment of the claims referred to, which it had against the Venezuelan Government.

An Executive Decree of October 5th, 1900, abrogated the law of July 1st, 1893, which prohibited the free navigation of the Macareo, Pedernales and other courses of navigable waters of the Orinoco River, thus destroying the exclusive right to use these channels which the Navigation Company claimed had been given to it by the concession and which it naturally had enjoyed until then.

By a later Executive Decree, dated December 14th, 1901, the Venezuelan Government absolutely annulled the extension of the concession granted by the contract of May 10, 1900. On the date of this decree the Company only possessed, owing to the misfortunes which happened to its other vessels during the perturbed days of the revolution, one serviceable steamer for its La Guaira service. The Company appealed to the Venezuelan Government, recalling its promise to protect this vessel, and received in answer a note accompanied by a copy of the Executive Decree which annulled the extension of the concession. The Company, which until then had endeavored to fulfill its share of the contract without paying attention to the Decree of October 5th, 1900, which destroyed the exclusive character of the concession which it claimed as a right, appears to have given up in despair and abandoned all further efforts to continue the navigation between La Guaira and the Orinoco (although it maintained its service between Ciudad Bolivar and Trinidad until the Government prohibited it on the 31st of May, 1902, on account of the perturbed state of the country) and it applied first to England and then to the United States asking for diplomatic assistance.

On the 1st of April, 1902, the Orinoco Shipping and Trading Company (Limited) ceded and duly transferred to the Orinoco Steamship Company, hereinafter referred to as the Steamship Company or the claimant, all its assets of all kinds and conditions, inclusive of its privileges and Venezuelan properties, and all its claims and actions in its favor against the Republic of Venezuela. Afterwards, from time to time, the claim of the Orinoco Steamship Company was the subject of correspondence between the United States and the Government of Venezuela.

As the result of these negotiations, a protocol of agreement was concluded on the 17th of February, 1903, for an arbitration between the United States and Venezuela, including "all the claims possessed by citizens of the United States of America against the Republic of Venezuela which may not have been settled by a diplomatic agreement nor by an arbitration between the two Governments and which will be submitted to the Commission hereinafter mentioned by the State Department of the United States or by its Legation at Caracas." The terms of the protocol established that "before assuming the functions of their office, the Commissioners and the Arbitrator shall make solemn oath to carefully examine and to impartially decide in conformity with justice and with the stipulations of this convention, all the claims that may be presented to them, and such oaths shall be inserted in the minutes of their proceedings. The Commissioners, or in case they do not agree, the Arbitrator, shall decide all the claims upon a basis of absolute equity, without paying attention to objections of a technical character, nor to the provisions of local legislation."

The claim of the Steamship Company was submitted to the Arbitrating Tribunal thus constituted. The claim consisted of four articles:

(1) For $1,209,701.05, amount claimed by the Company claimant to be due to it for damages and losses caused by the Executive Decree of October 5, 1900, which decree, as the Company asserted, annulled its exclusive right as cessionary.

(2) For Bs. 100,000, or say $19,219.19, which were still due from the contract of arrangement of May 10th, 1900.

(3) For $147,638.79, in which the Company claimant estimated its damages and losses, suffered during the revolution and the value of the services rendered by the Company to the Government of Venezuela.

(4) For $25,000 for lawyers' fees and expenses incurred to protect and maintain its rights.

The Commissioners appointed by the United States and Venezuela having disagreed in their opinion, the claim was submitted to the arbitrator, Dr. Barge, who conceded $28,224.93 United States gold, to the Company claimant, the amount which he judged to be due for services rendered to the Venezuelan Government by the Company claimant after the transfer to the claimant of all the rights of the Navigation Company. Dr. Barge rejected all the other claims of the claimant, refusing specially to grant damages for the annullation of the alleged exclusive concession held by the Navigation Company.

After judging that he had jurisdiction in the case, the arbitrator rejected the first article of the claim of the Company—the claim for damages caused by the annullation of its exclusive privilege—for three reasons: (1) Because, in the opinion of the arbitrator, the concession did not give the exclusive right claimed by the Company; (2) Because Article XIV of the concession prevents the claim being made before an international tribunal, even if the exclusive right claimed by the Company did exist, and even if Article XIV did not preclude the arbitrator from assuming jurisdiction in the case, because, by Article XIV the concessionary obligated himself to submit only to a Venezuelan Court any dispute or controversy which might arise regarding the interpretation or execution of the contract; (3) Because the transfer by the Orinoco Shipping and Trading Company to the claimant had never been advised to the Venezuelan Government in accordance of Article XIII of the concession.

The second article of the claim of the Company for 100,000 bolivars was rejected by the arbitrator, first, on the insinuation that it had not been proved satisfactorily that the sum claimed was then owed, but principally for two of the reasons already given for the rejection of the principal claim of the Company regarding the exclusive privilege, to wit: on account of the stipulation of the contract which obligates the Company to ask reparation only from the local Courts and because the Venezuelan Government had not been notified of the transfer of the claim of the Orinoco Shipping and Trading Company to the present claimant.

Of the various sums, aggregating a total of $147,638.79, which grouped together constitute the third article of the claim of the Company, the arbitrator conceded $28,224.93, and denied the balance. Of this amount about $60,000 appear to have been denied for reasons referring to the merits of the claim and $49,978.76, practically the entire balance, were denied for the reason that the operations upon which the claim for this amount were based, took place prior to the transfer by the Orinoco Shipping and Trading Company to the claimant, and the Venezuelan Government had not been advised of said transfer.

The article for $25,000 for lawyers' fees and expenses, met with the same fate as the greater part of the claim of the Company and was denied.

What the claimant now asks is the re-examination of this award by a competent and impartial tribunal.

To this reasonable request that the case of the Orinoco Steamship Company be reopened and that the case be submitted in its entirety to an impartial and international re-examination, the Government of Venezuela presents as an objection the fact that this decision of the American-Venezuelan Mixed Commission on Claims is final, and that to reconsider the decision of an arbitrating court would be equivalent to ignoring the force of such decision.

To this there is an obvious and very reasonable reply, to wit: that a

decree of an arbitrating Court is only final when the Court proceeds within the terms of the protocol which establishes the jurisdiction of the Court and that, when such terms are ignored, the decision is necessarily deprived of the right to final effect. In this individual case the protocol specifically said that "the Commissioners, or in case they should not agree, the Arbitrator, shall decide all the claims upon a basis of absolute equity, without paying attention to objections of a technical character nor to the provisions of the local legislation."

The equity alluded to is clearly not the local equity—that is, not necessarily the equity of the United States nor the equity of Venezuela, but the spirit of justice applied to a particular question without attention to local statutes, regulations or interpretation.

Attention has already been called to the express terms of the protocol which define the jurisdiction of the Commission to be established in conformity therewith, and it will be recalled that all claims possessed by citizens of the United States against the Republic of Venezuela which had not been settled by diplomatic agreement or by arbitration between the two Governments, were to be submitted to the Commission. It was further stated, in express terms, that these claims thus possessed, not settled and still pending "should be examined and decided" by the Commission to be appointed. However, in express violation of the terms of the protocol, the arbitrator denied claims amounting in all to about $70,000, partly money loaned and admitted to be due to the Company claimant, and partly for services rendered by the vessel of the claimant to the Venezuelan Government and for damages caused by the detention of the vessel.

To say that these claims should be rejected for lack of jurisdiction would be, as Ralston, Arbitrator in the Martini case (Ralston's Report, p. 841) said, "equivalent to pretending that not all * * * the claims were submitted to (the Commission) but only such * * * claims previously contracted upon, and only in this manner and to this extent could the protocol be maintained," and it is equally vicious in law and equally disastrous in fact to the claimant to assume technical jurisdiction in the claim and then disallow it, evidently on its merits, by reason of the clause in question, as was done by the Arbitrator. For this Government can never admit that a claim which has not been judged by a Venezuelan Court is not a claim which it has the right to protect and enforce, and submit by protocol to an international convention to the end that it be judged in its entirety, or quoting the exact terms of the protocol, that it be "examined and decided" on its merits, without attention to any contract or renunciation which the holder of the claim may have made in his private character with the contracting Government.

And in denying these claims, basing himself upon the Calvo clause, not only did the Arbitrator violate the terms of the protocol in the manner stated, that is, refusing to examine them on their merits, but also in denying these claims he violated the express provisions of the protocol that all claims submitted were to be examined by the light of absolute equity, "without paying attention to objections of a technical character, nor to the provisions of the local legislation."

It is difficult to see how the Arbitrator could have more clearly ignored the most common principles of justice and equity, than by denying the claims of the claimant for the reason that he had violated the Calvo clause by seeking reparation through an international claim, when the Government on whom the claim is made admittedly violated all the stipulations of the contract by totally annulling it. Quoting the words of the Arbitrator: "In the face of absolute equity, the artifice of making of the same contract a chain for one of the parties and a screw-press for the other, can never be successful." (Ralston's Report, p. 21.)

And it is doubly difficult to understand the reasoning by which one of the parties to a contract can violate all of its terms by annulling it, and still refer

to these same terms as existing and as the measure of the rights of the claimant who asks for reparation.

Once again did the Arbitrator ignore the express terms of the above mentioned protocol, when he gave, as another reason for denying these same claims, amounting to about $70,000, that, both by the terms of the contract with the Company and the provisions of the Venezuelan laws, it was necessary that the claimant should notify the Venezuelan Government, the other party to the contract and the debtor, of the transfer of the claims in question by the Orinoco Shipping and Trading Company to the Orinoco Steamship Company, for there could hardly be found a clearer illustration of a nicety of technicality and of disregard of general equity than this proceeding. Absolute equity in Anglo-Saxon countries does not require the creditor to notify the debtor of the transfer of a debt, provided such transfer does not affect prejudicially the rights of the debtor, and absolute equity does not signify the technical provision of the Venezuelan law nor the technical requirements of the contract between the parties. Absolute equity assimilates the knowledge to the notification according to requirements of the local legislation. The Government had actual knowledge of the transfer in question.

At the same time that this Government believes that such inattention to the express terms of the protocol justifies the re-opening and the resubmission of the whole case before an impartial tribunal, there are other reasons which tend to discredit the sentence in its entirety.

The claimant always maintained that the privilege granted by the Grell contract was an exclusive privilege to ply between a foreign port and Trinidad, and to use at the same time the channels which were exclusively reserved to the coasting trade. In other words, the Company was to engage in foreign business, but was to possess at one and the same time the right to use certain channels which it would not have had the right to use without the concession. Although this would have been in itself an enormous advantage, the benefit, according to the claimant, consisted in the fact that the Company was to possess the exclusive right to navigate, to trade with foreign ports and still to use the channels reserved to the coasting trade, and that during the life of the concession in favor of the Company a similar privilege would not be granted to any competing company.

In the opinion of the Arbitrator the exclusive right was not a question of law, but he ignored the important and fundamental point that the Company was to exercise exclusively the right and privilege specified in the concession until the date on which the Venezuelan Government should fix certain points of transshipment, and should make the necessary installation.

Supposing that the Arbitrator were right in his interpretation of the contract, which is not admitted, that the exclusive right claimed by the Company did not exist in law, it necessarily follows that the exclusive right existed in fact and that the Company possessed, therefore, the exclusive right claimed until the Government of Venezuela should withdraw this right by establishing points of transshipment and making the necessary installations. In other words, the fixing of these various points of transshipment and the establishment of the necessary installations were made a prior condition to the deprivation of any exclusive rights which the Company might enjoy, as a question of law or as a question of fact.

The award of the Arbitrator, therefore, which ignored these simple, yet essential considerations, is in every respect unacceptable. He assumed, it is true, the jurisdiction, but the error which he made is so serious and evident, that this Government can not ask its citizens to accept this award as final.

Although the attention of Venezuela has been called several times to these arguments, and it has been courteously and trustingly requested to submit the case of the claimant in its entirety to re-examination by a competent and impartial tribunal, the Venezuelan Government has curtly objected "that the awards of the Commissioners, and in case that they

should not agree, those of the Arbitrator, shall be final and conclusive." At the very same time and almost at the very moment that Venezuela declared the final force of the awards of the Commission, it was engaged in protesting against the Belgian and Mexican awards, although the protocols, in conformity with which these two Commissions were established, stipulated that "the decisions of the Commissioners, and in case they should not agree, those of the Arbitrator, shall be final and conclusive." To a disinterested party it would seem, therefore, that the awards in favor of Venezuela are final and conclusive, but that awards adverse to her are not final nor absolutely conclusive. In this conflict between theory and practice, this Government naturally invokes the practice of Venezuela.

It is, however, pertinent to call the attention of the Government of Venezuela to the fact that the United States has conceded on various occasions the request which it now confidently presents; that the United States, at the request of Mexico, set aside an arbitral award and that, as Venezuela can doubtless recall, at her express and clear request, the United States set aside the awards of the Commission of the United States and of Venezuela of 1866 and appointed a new Commission in accordance with a convention signed in 1888, with the result to Venezuela of a saving amounting to the total sum, inclusive of interest, of about one and one-half million dollars, in comparison with the awards of the first Commission.

In view, therefore, of the circumstances of the case and of the express violations of the terms of the protocol, or of errors in the final award, arising from serious errors of law and of fact, and in the light of the history of both nations in the matter of arbitral awards, this Government insists upon the reopening and resubmission of the entire case of the Orinoco Steamship Company to an impartial and competent tribunal and confidently expects them.

4. The claim of the New York & Bermudez Company against Venezuela has been for a long time in the Department, and the details of the wrongs suffered by the unfortunate claimants are equally known to the diplomatic and judicial authorities of Venezuela. However, in order to present the facts in this case and to justify the attitude of this Government, the origin, history and present status of the case are here briefly and explicitly stated.

The Company claims the ownership of an asphaltum lake, situated in the State of Bermudez, on three separate and distinct titles, each one of which was legally acquired from the Venezuelan Government. Venezuela has cancelled, through judicial proceedings, the first of these titles, and incidentally to the cancellation of this title, it has taken possession, which it now holds, of the properties obtained by virtue of the second and third titles. On the 15th of September, 1883, one Horatio R. Hamilton, an American citizen, obtained from Guzman Blanco, President of Venezuela, for the term of twenty-five years, a concession or contract for the exclusive exploitation of the asphalt and of the uncultivated lands of the State of Bermudez. The concession granted the right "to explore and exploit the natural products of the forests," consisting principally of woods and resins, "existing in the uncultivated lands of the State of Bermudez." Article 2 granted "the right to exploit the asphalt in the said State of Bermudez;" article 8 stipulated that during the term of twenty-five years "the Government shall not grant to any other person any similar concession in the State of Bermudez;" article 10 stipulated that the contract could be transferred with previous notice, and the contract stipulated specifically in article 9 that "in case of failure to fulfill any one of the stipulations herein expressed, this shall annul the present contract ipso facto." In other words, the contract was a concession of the right to explore and exploit during a period of twenty-five years in the State of Bermudez, and it stated that, in case of failure to exercise this

right or to fulfill the conditions expressed in the concession, the contract would become null and void.

To this contract was added later, on the 19th of October, 1883, an additional article known under the name of "First Additional Article," which imposed duties upon the dye-woods or timber which the concessionary Hamilton might exploit or export.

The Hamilton contract and the additional article were approved on the 5th of June, 1884, by the Federal Congress, and the concession and its supplement were published in the Official Gazette of the 21st of July, 1884, thus acquiring the force and the effect of law.

On the 30th of May Hamilton and the Minister of Fomento contracted a so-called "Second Additional Article" by which the concessionary "obligated himself" to canalize for importation and exportation one or more of the rivers of the State of Bermudez. In case that Hamilton should canalize according to the terms of the article, he was to enjoy the exclusive right of navigating the rivers which he might canalize and he was to charge a tax for navigation in same. It appears that the parties had in mind the construction of a railroad, and the last clause of this second additional article stipulates "that he shall enjoy the same rights in case that he should build a railroad," from which it would appear that Hamilton did not obligate himself to build a railroad, but that in case he should build one, he would enjoy certain rights and privileges which he would not have otherwise.

It is important to note that this second additional article was not embodied in the contract when the latter was approved by Congress, and that the second additional article was never approved by the Venezuelan Congress. In other words, the second additional article was a separate and distinct contract which had no connection with the first contract nor with the first additional article; that it was simply a contract between the said Hamilton and the Venezuelan authorities; separate and distinct in its origin, it has remained separate and distinct; therefore, it arose and fell by itself. It is also difficult to understand how the execution of this second additional article could favorably affect the Hamilton concession. It is also difficult to understand how the failure to carry out the conditions of the article could in any way invalidate or touch a contract previously in existence, separate and distinct in its origin, and which had no necessary connection or relation with the original concession.

On the 24th of October, 1885, the New York & Bermudez Company was formed in conformity with the laws of the State of New York, and on the 6th of November Hamilton transferred to it his contract including the additional articles.

This transfer was approved by the Venezuelan Government on the 9th of December, 1885. Through these various operations the New York and Bermudez Company succeeded to all the rights of the Hamilton concession and its supplements.

The New York & Bermudez Company did not, however, wish to rest its right to exploit asphalt under the Hamilton concession. Its Secretary made a petition in 1888 to obtain a mining title on the asphalt deposit, and in conformity with the mining laws in force at the time, the Secretary obtained a title from the President of the Republic and from the Federal Council on the 5th of December, 1888. Two days later a final title was granted to the property comprised in the concession, which was to be valid for a period of ninety-nine years, and on the 1st of August, 1893, the Secretary of the Company and his wife made transfer to the Company of the title which had been originally acquired and solely for the benefit of the Company.

But the Company did not stop at this in its efforts to obtain a perfect title to the properties in question. On the 8th of October, 1888, the Secretary, on behalf of the Company, asked for a title "over the uncultivated lands which comprise the mines already mentioned for the use of the work of exploitation." On the 14th of December, 1888, a final title was granted over these lands "in favor of the New York and Bermudez Company."

It is evident, therefore, that the Company claims title to the asphalt lake by

virtue of three separate and distinct titles: first, the Hamilton concession, which gives to it the exclusive right to exploit asphalt in the State of Bermudez during twenty-five years from the 15th of September, 1883; second, the right to exploit the asphalt lake during ninety-nine years, from the 14th of December, 1888, by virtue of the mining title; third, in conformity with the title of uncultivated lands, the full proprietorship of the lands which surround and are covered by the lake.

It is unnecessary to state, point by point, the various interruptions to which this Company was subjected. Suffice it to say that on the 4th of January, 1898, without previous notice of any kind to the Company or any judicial proceeding, President Crespo cancelled the Hamilton concession by an Executive Decree. Inasmuch as national (August 23, 1898) and international tribunals (Mixed Commission on American-Venezuelan Claims) have decided that a concession validly granted cannot be annulled by an Executive Decree, it is unnecessary to discuss the various attempts to take away from the proprietorship of the Company the mines known respectively under the names of "Venezuela" and "La Felicidad," because if the title was in the Bermudez Company it could not be in the claimants of the "Venezuela" and "Felicidad" at one and the same time. **This was also the opinion of the High Federal Court, which decided in January, 1904, in an action brought by the claimants of the alleged mine "Felicidad," that the latter had no title whatever to the property in question, because this was entirely included in the Hamilton concession, which concession, notwithstanding the Executive intervention, was still valid and subsistent.**

It immediately occurred, as it appears, to the Venezuelan authorities that no act of unquestioned validity could be adopted against the New York & Bermudez Company while the Hamilton contract was pending and valid. On the 20th of July, 1904, the Attorney General of Venezuela, consequently, instituted proceedings in the High Federal Court for the cancellation of the Hamilton contract and the sequestration of the property. The foundation for this cancellation, simply expressed, was nonuse; for, although the concession had existed twenty-one years, the Company had confined itself, according to the Attorney General, solely and exclusively to the exploitation of the asphalt lake in Bermudez, thus neglecting to fulfill the other obligations of the contract, for which reason the exploitation of the natural products of the State of Bermudez, with the exception of the asphalt, had remained at a stand-still for more than twenty years. The exploitation of the asphalt had been done, it was said, on so small a scale, that the receipts by the Government were ridiculously small. It may be said, by the way, that the Company received little or no encouragement to exploit the asphalt when Venezuela distributed portions of its property to other claimants. And finally it was alleged that the Company had not canalized any of the rivers in the State, which was a breach of the contract. The Attorney General, therefore, brought an action for the dissolution of the contract and for the recovery of the damages suffered on account of the Company having failed to fulfill the contract, "in accordance with the just ruling of experts and calculated in accordance with the basis established by the first additional article."

One can not fail to remark, that the first additional article imposed a duty upon dye woods and timber that the Company might export, and that the asphalt had no place in the first additional article. It also appears that the right or duty to canalize arose from the second additional article, which was never an essential part of the contract and that it never received the approval of the Venezuelan Congress. The asphalt is not mentioned. It must also be borne in mind that the second additional article gave an exclusive right of navigation in the rivers which Hamilton might canalize. As the Venezuelan Government ignored the exclusiveness of this article, it is difficult to understand how the infringement of this condition, subsequent to the infringement of its express terms by the

Venezuelan Government, could give to the Government any right of action against the Hamilton concession, even admitting that the second additional article was a constituent part of the Hamilton concession, which it was not.

Although it would serve no useful end to enter into extensive details of these proceedings, it is necessary to consider the proceedings of the sequestration and of the principal action by which the Hamilton concession was annulled. It appears to have been a matter of great importance for the Venezuelan Government to obtain possession of the asphalt lake before the Hamilton concession could be annulled by a decree of a court of justice. Why the possession of the lake was so urgent while the proceedings were pending, is something which does not appear, but the Government decided that the possession was essential. Therefore, the Hamilton concession was considered by the Attorney General as a lease, although no kind of rental had been specified and although the characteristics of the concession indicate rather a concession than the relation between a proprietor and a lessee. Be it as it may, the Court interpreted that the concession was a lease, and in conformity with article 373 of the Code of Civil Procedure, the sequestration of the property was decreed. Section 7 of article 373 was taken as a foundation, which to disinterested parties would appear to apply only in case of a lease and not of a concession. The exact wording of this section is as follows: "Sequestration may be decreed, * * * * *

"7—Of the thing leased, when the defendant is sued for failure to pay the stipulated rental, because the thing is deteriorated, or for failure to make improvements to which he is obligated by the contract, provided that any of such circumstances should be proved in the manner stated in article 368."

It is not easy to understand how this section could be made the basis of sequestration proceedings, because admitting, which it is not, that the concession was a lease, the defendant was not sued for failure to pay rental, as no rental had been stipulated. The property was not deteriorated, as the property was in its natural state, and trees and rivers are not by nature deteriorable. The Company did not fail to make the improvements to which it was obligated by the contract, since in the original concession no improvements are specified and the canalization only appears in the second additional article, which was not a part of the Hamilton concession. If it is supposed—which cannot be admitted—that the additional article which was not ratified by Congress was a part of the original Hamilton concession, a sufficient answer to the claim of the Government is to be found in the fact that Venezuela ignored the terms of the additional article in granting to others what was exclusively reserved to Hamilton by the precise terms of the second additional article. The Attorney General trusted greatly to the failure to make improvements as a basis for the sequestration proceedings, the only basis which would appear to support such proceedings in law, although in fact, as has been demonstrated, there existed no cause whatsoever.

Article 368 of the Code of Civil Procedure is referred to as though it gave to the Court the right to appoint, at the request of any one of the parties, a sequestrator during the trial of the cause of action. Three conditions are mentioned in which such a sequestrator may be appointed: first, when it is necessary to prevent the alienation of the object of the action, and it does not appear that the Bermudez Company attempted to alienate but rather to retain the object; second, the Judge may order the sequestration of determinate property. It is true that the property in this case was determinate, but it was not leased property; it was property held under the land and mining titles, and not under the Hamilton concession, because under the Hamilton concession the right of enjoyment was indeterminate and not determinate. No importance is given, however, to this section, because the right to sequestrate seemed to exist,

if it at all existed, by virtue of article 373 above cited. Third, the Judge may demand the deposit of security and failing this, he may order the embargo of sufficient property. The Court never demanded security from the Company before giving a decree. In fact, the request to appoint a sequestrator in conformity with articles 373 and 368 was made in the absence of the Agent of the Company, without his knowledge, and the decree appointing the sequestrator was given and it was endeavored to carry it into effect before the Company was aware that the motion was pending. It is unnecessary to comment upon *ex parte* proceedings of this kind, which embrace the entire property of the New York & Bermudez Company; neither is any comment necessary upon the appointment, without having given any opportunity to object and without security, of the bitterest enemy of the Company and its commercial rival, Mr. A. H. Carner, as sequestrator. Mention must be made, however, of the fact that the sequestrator was placed in possession of the property sequestrated with a demonstration of force. From which it would appear that the Government claimed a right that it did not have; that it issued a decree without giving notice to the defendant and executed the sentence with armed force. It is a matter generally well known that the sequestrator is still in possession of the sequestrated property, that he is exploiting the mines of the New York & Bermudez Company without any responsibility towards the Company and without having to render any accounts.

However important were the sequestration proceedings and however unjustified they were in law and in fact, they were but an incident in the case. The purpose of the action, as it was originally instituted by the Attorney General, was to obtain the dissolution of the Hamilton contract and damages for the infringement of the concession. It would not be to any useful purpose to relate here point by point the Court proceedings, as such proceedings are public and the original documents are in the hands of the Venezuelan Government. Suffice it to note that the Hamilton concession was annulled on the 7th of August, 1905, by decision of the Federal Court and Court of Cassation, the Court of last resort in Venezuela.

The examination of the proceedings shows that the Hamilton concession was cancelled for non-use. It was not, nor could it be for non-exploitation of the asphalt, because the cause of the action was only that the New York & Bermudez Company had confined itself solely to the exploitation of asphalt. The reason for this cancellation must be found elsewhere, namely: in having failed during a period of twenty years to exploit the natural products of the territory included in the concession. It will be noticed that the grounds upon which reliance was placed appear in the first and second additional articles. The first additional article gave to the Company the right to cut and exploit, or export dye woods and timber, paying to the Government certain specified amounts. It is admitted that the Company did not devote itself continuously to cutting dye woods or timber. The principal grievance, however, of the Venezuelan Government, lay in the fact that the rivers were not canalized as they should have been according to the second additional article. It is stated without hesitation and with great insistence that the second additional article was neither in law nor in fact a part of the original Hamilton concession, and it is a certain thing that it was never ratified by Congress as a part of the concession. If it were a subsistent and valid agreement, it was an independent agreement subject to being annulled or set aside in separate and convenient proceedings. But it appears later on that the Venezuelan Government ignored the terms of this second additional article, violating the exclusive rights of navigation granted to Hamilton, when it granted to a certain Pinelli, in 1887, a concession of certain privileges of navigation included within the territory assigned to Hamilton by the second additional article. This was an express repudiation of the second additional article, and it is difficult to see how a Government can repudiate a contract and at the same time make of its repudiation the ground for demanding damages from the concessionary. It is impossible to understand how the failure to improve or to canalize a river,

when the right to do so was expressly annulled by the Government, could be made the basis of sequestration proceedings, as has been before stated, when the original Hamilton concession was not a lease, when according to the second additional article it was not a part of that instrument, even supposing that it was a lease, and when the repudiation of the second additional article by the Government destroyed the life of said article.

Supposing the Hamilton concession to have been properly cancelled, the Government claims damages for the infringement thereof, and it finds contained in the first additional article the measure of such damages. A careful reading of that article shows that it merely referred to the exploitation and exportation of dye woods and timber. It did not refer to the right of enjoying and exploiting the other natural products specified in the concession. It is difficult to see how a clause which specified the dues which the concessionary was to pay to the Government for cutting and exporting certain woods, can be made the basis of damages for the reason that this was not done; for it is evident that the Company would have to pay the Government the sum specified for cutting and exploiting; if the Company did not cut the woods in question, there was nothing to be paid. There clearly was no damage caused to the Government and there was no damage to the wood, as it still stood and could be made the subject of another concession. But if a measure of damages is necessary where no damages have been caused, this is to be found in article 9 of the concession, rather than in the first additional article. Article 9 specifically stipulates that "in case of failure to fulfill any one of the stipulations herein specified, the present contract will be cancelled *ipso facto*." In other words, the violation of the contract carried its own penalty, that is, forfeiture. In view of these circumstances, it is unnecessary to discuss more particularly the question of damages.

Furthermore, supposing that the Hamilton concession was properly cancelled, it follows that it was or could only be affected by the decree of cancellation of the interest which Hamilton and the Company and his concessionary had in the asphalt lake by virtue of the Hamilton concession of September 15, 1883. However, as the Company held the lake through a separate and distinct mining title, the validity of which was never questioned, and inasmuch as the Company had full proprietorship of the lands which surrounded the lake and were covered by it, which also has never been questioned, it would appear that the Company possesses at this very moment the right, in accordance with the law, to exploit, manufacture and export asphalt from its property, by virtue of these two titles which are not impeached, not questioned and are validly existent.

This fact was admitted by the Attorney General in an argument before the Court. The Court was aware of the existence of these titles, as they are public and have been published in the "Official Gazette." The attorney for the Company defendant exposed in open Court the existence of these titles, and stated that the existence itself of them was and must necessarily be a bar to the forfeiture of the proprietorship granted by these titles. The Attorney General stated that these titles were not then in litigation, as he was proceeding against the Hamilton Concession, and not against land and mining titles.

It would appear, therefore, that the cancellation of the Hamilton concession, improperly called a lease, has been made a pretext to obtain possession of the asphalt lake, the title of which is held by the Company not by virtue of the Hamilton concession, as this was a right to enjoy during the limited period of twenty-five years, but by virtue of the mining title and the title of proprietorship of the lands covered by the lake.

In view, therefore, of these facts and circumstances, briefly stated but sufficiently detailed, the embargo of the property belonging to the Company through titles unquestioned and subsistent, is a violent and unjust deprivation of property, and the continued possession and exploitation of these mines by a sequestrator or by any other person other than an agent

legally authorized by the Company, is a daily and increasing injury. As the Company has been unsuccessful in obtaining the protection of the Courts of justice, and as the Company continues to be deprived of its property, this Government is compelled to protest energetically but courteously through the diplomatic channel against the continuation of an injustice perpetrated by an abuse of judicial proceedings. This is not the first time that the attention of the Venezuelan Government has been diplomatically called to this matter, but, as the repeated requests of this Government have not succeeded in re-establishing the Company in its just rights, the Government once more calls attention to a state of things which must not and cannot be allowed to subsist.

Although this Government is certain of its position and declares that the Company has been done a great injustice, this Government is, notwithstanding, willing to submit the whole matter on its merits to an impartial and competent tribunal, to the end that the rights of the Company be investigated and its losses be established by others who are not parties to the litigation. This Government, therefore, asks for an international arbitration of the case of the New York and Bermudez Company against Venezuela.

5—The Government of Venezuela is also aware of the claim of the United States and Venezuela Company, commonly known by the name of the Critchfield claim, and being acquainted with the case, the Venezuelan Government will not need to be informed that the acts of the Government have so seriously hindered the peaceful and profitable exploitation of the mine and of the railroad, that the Company has abandoned, since some time ago, all work on same.

The essential facts of the case, briefly stated, are, that General Castro granted on the 18th of June, 1900, to a certain Guzman, a concession and definite title to the asphalt mine called "Inciarte," located at about seventy miles west of the City of Maracaibo; that Dr. Guzman sold the mine on the 5th of February, 1901, for $25,000, to a certain George W. Critchfield, a citizen of the United States, who was acting as the agent of a syndicate composed of American citizens, legally incorporated later, on the 12th of June, 1901, in New Jersey, under the name of United States and Venezuela Company with the express purpose of exploiting the concession.

All the formalities required by law were complied with, the sale was registered on the date of the day in the Public Register of Maracaibo; later, on the 22nd of March, 1901, the sale was registered also at the Ministry of Fomento, and on the 25th of February the concession was validated by the Congress of the United States of Venezuela. It will be remembered that at the time of the concession General Castro was Provisional President of the Republic, that Congress was not in session and that when Congress convened, the Provisional President presented to it an account of his political and administrative acts. A vote of confidence was immediately approved, and everything that the President had done during the Provisional Presidency was expressly ratified, as appears from the terms of the Resolution of Congress:

"The Congress of the United States of Venezuela,

"Having scrupulously examined the Message which has been sent by citizen General Cipriano Castro, Provisional President of the Republic, in which he gives an account of his political and administrative acts,

"Resolves:

"First:To give our approval to all the acts executed by General Cipriano Castro during the period in which he has exercised the Provisional Presidency of the Republic."

As this important approval and ratification of the acts of the President is publicly known, it is not necessary to refer further to it.

It must be stated, however, that Critchfield did not obligate himself to take title to the mine and to pay a price of purchase, excepting under a certain condition, and that is, that the Venezuelan Government grant to

Critchfield a concession for the construction and exploitation of a railroad, and it appears, further, that President Castro was advised that the perfecting of the purchase of the mine depended upon the concession of the right to build a railroad. It appears, also, that the railroad concession was granted by President Castro through his authorized agent, the Venezuelan Minister of Public Works, on the 20th of April, 1901.

In this contract were specified certain important and fundamental conditions: First, that the concessionary should enjoy immunity from all national taxes or contributions, with the exception of certain stamp dues and mining dues; second, that the concessionary was exempted from all duties on the importation of materials, etc., necessary for the construction of the railroad, the exploitation of the mines and the refining of the products of the mines; third, the construction of the railroad was to commence within six months from the date of the concession and should be concluded within one year after having commenced; fourth, the concession was for a period of fifty years, at the expiration of which the railroad in good condition, with all rolling material and other appurtenances, was to pass to the Government.

The United States and Venezuela Company acquired domicile in Venezuela on the 1st of August, 1901, and on the 2nd of January, 1902, Critchfield transferred to it the railroad and mine concession, which transfer was approved by the Venezuelan Government on the 30th of January, 1902.

From this brief statement of the origin and terms of the concession it appears that the claimant did not receive any gratuity; that he gave value for the property acquired, that he obligated himself to build a railroad to connect the mine with the port, a work of great difficulty on account of the physical conditions of the country, and that he obligated himself to deliver the railroad in good condition to the Government at the end of fifty years.

The advantages expected by Critchfield were not to be enjoyed by him alone, as Venezuela was to receive the benefit of the charges and in course of time was to become the owner of a railroad.

And it must be stated in this respect that the claimant has spent, on account of this concession, about $600,000 gold, he has canalized rivers and made them navigable, he has felled woods, built and operated a railroad, constructed and exploited a large mining and refining plant, giving employment to about one thousand Venezuelans.

Although the Company did not forsee any of the difficulties which have arisen later, it endeavored, through a careful and precise exposition of rights and privileges which it was to enjoy and of the duties which it obligated itself to fulfill, to avoid future complications which might otherwise result from an honest difference of opinions as to the nature and extent of these rights, privileges and duties. To this end it was expressly stipulated in Article XII of the concession that "neither this enterprise, nor the products of its mines may be burdened with any kind of national taxes or contributions, excepting those charged by the Department of Public Instruction and the charges imposed by the mining laws now in force."

It would appear that this exposition of rights and obligations does not require any interpretation. As no dispute has arisen regarding the stamp duties, it is unnecessary to do more than mention the stipulation, and it has never been claimed that any one of the new taxes established since the date of the concession have been stamp duties.

In order to measure the rights and the obligations of the parties in accordance with this concession, it is only necessary to consult the Mining Law of 1901 which was in force at the time of the concession.

According to this law, the only tax was one per hectare amounting to about ten cents for each hectare of the area of the mine, which in the case of the Inciarte mine of the Company, a mine of 300 hectares,

amounted to a total tax of thirty dollars per annum. It would appear, therefore, that after paying this nominal tax of thirty dollars per annum, the Company was exempt from any other payments of any kind to the Government of Venezuela. This was the understanding of the Company; this should have been that of the Venezuelan Government, because it was the Government who wrote out the concession and it is supposed to know the meaning of the terms employed. It is convenient to mention, by the way, that the claimant maintains and has always maintained that he would not have bought the concession, nor expended any money upon it, if the concession had not expressly stated the exemption from any future increased taxes.

Notwithstanding this solemn exemption, the Venezuelan Government has proceeded to establish additional taxes against the Company, extending to it the provisions of laws subsequently sanctioned.

On the 23rd of January, 1904, a new Mining Code was decreed in Venezuela, by which the taxes of the Company were increased in the following manner: First, the tax of ten cents per hectare was increased fourfold, thus establishing a new tax of $120 per annum instead of the tax of $30, which tax was specified in the concession; second, a tax of 3 per cent on the gross product of the mine was established, which, according to the price of $20 per ton established for the refined asphalt, amounted to a tax of 60 cents per ton on the products of the mine; third, an Executive Decree relating to mines, dated the 21st of January, 1904, established new taxes, as follows: four bolivars, or 80 cents per ton, as export duty on each ton of asphalt exported; fourth, a minimum tax of 25 per cent on the net products of the mine.

Shortly after this new code was decreed, the Venezuelan Government proceeded to enforce these several provisions, excepting the tax of 25 per cent on the net products of the mine, and further, violating this time the terms of the concession, the Government proceeded to establish the regular import duty of the country on certain bags and other articles imported by the Company for use in connection with its mine and its railroad for packing and shipping asphalt.

The net result of the various taxes imposed is $120 per year hectare tax, and $1.40 for each ton of asphalt exported, and the regular import duties of the country on all goods imported in connection with the exploitation of the mine.

The Company has controverted and does controvert the right of the Venezuelan Government to establish these taxes, and a reference to the terms of article XII of the concession justifies, in the opinion of this Government, the claim of the claimant.

It is insinuated that the Company should ask redress for its grievances, if it has any, before the Venezuelan Courts, and attention is called to the Calvo clause, which is supposed to exclude diplomatic intervention, but this Government fails to understand how a country can derive any advantage from a clause in a contract, when it denies the existence of the contract itself in which the clause is supposed to be found, nor can this Government concede the right of its citizens to renounce, or abandon by contract the right of the United States to intervene diplomatically in a proper case.

The invitation to deduce one's rights in a court of justice when the rights are specified and protected in the concession as powerfully as words can specify or protect any right or privilege, is an invitation to delay operations, to waste the resources of the Company in the costs of an action without any guarantee that the decision of the Court, when given, shall be accepted as obligatory for the Executive, in case that such decision should not sustain the contention of the Executive. Reference has been made to the case of the Orinoco Corporation, in which it will be recalled that an international tribunal and the law courts of Venezuela denied the power of the Executive to annul a contract that had been rati-

fied by the Venezuelan Congress, and notwithstanding this, notwithstanding the existence of this international and national decree, the Federal Executive has repeatedly made concessions of the property of the Orinoco Corporation according to its concession, as though the decisions of the tribunals, international and national, were insubsistent. Under these circumstances, this Government cannot advise its citizens to bring a matter to trial, when it appears that decisions given in cases where the claimants were its citizens have been repeatedly and systematically ignored.

The United States, therefore, must insist either that the Venezuelan Government withdraw its opposition to the right of the claimant to execute its contract in accordance with the terms of the concession, or that the question be submitted to an impartial and competent tribunal, by whom the rights of the Company shall be judged and the damages appreciated.

Having thus stated with full particulars the various cases regarding which the United States is now compelled to seek due remedy and redress, you are instructed to call the immediate and serious attention of the Venezuelan Government to these various causes of complaint, and to insist with the Government before whom you are accredited that it give to all the claims herein exposed and to each one of them, immediate attention.

You will deliver a copy of these instructions to the Venezuelan Minister of Foreign Relations. [Rep. Ven. Min. For. Rel., 1907, 233.]

Although Mr. Root's name was signed to this letter, it is possible that the claims covered by it were presented to the Department originally in the form of briefs by the attorneys of the respective claimants, as is customary in such cases. These, being wholly *ex parte*, did not, and could not furnish the Department of State with the facts and arguments on the side of Venezuela. The letter, therefore, was undoubtedly based upon, if not largely composed of, these briefs, the work of revision and of consolidation being done by the proper officer of the Department.

In the case of the protocol of January 12, 1905, Mr. Bowen (North American Review, March 15, 1907, page 579) states that "**the entire protocol had been written by the attorney of the Asphalt Company.**" Mr. Bowen adds—"Several attempts have been made to fix on Mr. Hay the responsibility for all the occurrences in the Department of State at this time, but it is now pretty generally known that he was utterly unable to cope with the forces arrayed against him."

On April 23, 1907, the Venezuelan Minister for Foreign Affairs transmitted to Minister Russell a memorandum, in which the Government of Venezuela put forward, in brief and concise language, its reasons for declining the requests made by the United States in the communication of February 28, 1907. This memorandum reply was unsatisfactory to the Government of the United States because the cases were not treated in sufficient detail. Minister Russell accordingly made further representations to Venezuela, pointing out the inadequacy of the memorandum of April 23, 1907, and requested that the Venezuelan Government should set forth, in greater minuteness, the objections it might have to the demands of the United States Government.

The Venezuelan Minister for Foreign Affairs complied with this request on July 24, 1907, as follows:

[Translation.]

The Minister for Foreign Affairs to Minister Russell, July 24, 1907.

I have the honor to acknowledge receipt of your excellency's note of the 9th inst.

With considerable surprise my Government has observed the scarcely cordial phrases used, in the note I refer to, in appreciating and judging the actions and determinations of the Executive Power in the cases that your excellency mentions,—phrases of which abstract is made in answering your excellency's Government. Rightly examining the questions again brought to the consideration of the Government of Venezuela, it will be found that the patience and discretion which the Executive Power has observed in those affairs have a very high standing—a procedure deliberately adopted by reason of the desire to maintain on the best footing the friendly relations which it has had especial care to cultivate with that of the United States.

In the first place, the Government of Venezuela reiterates to Mr. Minister the exposition contained in the memorandum which was addressed to him in answer to the one forwarded by him to this office on March 30th last; and it now proceeds to set forth, point by point, some considerations which it deems pertinent, in order to make clear the right and the justice of its position.

The Government of Venezuela cannot but think that that of the United States forgets those data and antecedents which ought to prevent the granting of its protection to Jaurett, who, being a fugitive from France—his native country—and from the Courts of Justice of Mexico, endeavors to find protection within the folds of the American flag, against a country to which said Government has repeatedly offered the assurance of its sentiments of good friendship. So much more is there to wonder at such an attempt, considering that said Jaurett, on fleeing from Mexico in the year 1896, for the crime of swindling, immediately came to Venezuela, knowing, no doubt, that there existed no treaty of extradition with the Republic of Mexico. He lived here until his expulsion without having previously complied with the essential requisite of maintaining, without interruption, a residence of five years in the territory of the United States, in conformity with the laws in force in that country, in order to enable him, in that period of time, to truly acquire American nationality.

It is also very strange that the Government of the United States does not take into consideration Mr. Jaurett's conduct in Venezuela during the time of the revolution called "Libertadora," when, receiving a salary from the New York & Bermudez Company, the agents and principal accomplices of said revolution, in cabling, via Curacoa, information to the Associated Press and important publications of the United States, he availed himself of the opportunity to circulate alarming and even calumniatory reports against the constituted Government of Venezuela.

Your excellency's note lays particular stress on the fact that the Constitution of Venezuela limits the exercise of the sovereign right of expulsion from the territory of the Republic to pernicious foreigners, in case they have acquired a domicile. To this the Government of Venezuela answers that it never considered M. Jaurett as domiciled in Venezuela, because, although he lived in the country for several years, there is no evidence of his having made any declaration before the proper authorities of his purpose to contract a domicile in conformity with the legal provisions, it being public and notorious that notwithstanding his being a married man, he did not make a home here with his wife, she having resided all that time out of Venezuela.

Lastly, said Jaurett was considered, during the greater part of his residence in Venezuela, as a reporter in the service of the American Legation; first, owing to his connections and business relations with Mr. Francis B. Loomis, Envoy Extraordinary and Minister Plenipotentiary of the United States until the beginning of 1901; and then, again, on account of his having been private secretary to Mr. Bowen until 1904, when those services were terminated, Mr. Bowen having then obtained information from the Legation of France very unfavorable to the character and antecedents of M. Jaurett.

According to the law of foreigners of the Republic, of April 11, 1903, residence is interrupted in the matter of the acquirement of domicile by the act of being in the diplomatic service of another country. (See said law and pages 37, 43, 69, 138, 194, 219, 222, 223, 224 and 229, of a pamphlet printed at the office of the Government at Washington in 1905 and entitled—"In the matter of the charges of Mr. Herbert W. Bowen, United States Minister to Venezuela, against Mr. Francis B. Loomis, First Assistant Secretary of State, and the counter-charges of Mr. Loomis against Mr. Bowen.")

With regard to the second point dealt with in your excellency's note, the revision of the awards given by the Umpire of the Venezuelan-American Mixed Commission, in the claims presented before the said Commission by the Agent of the Government of the United States, Mr. Robert C. Morris, on behalf of George Turnbull, the Manoa Company, Limited, the Orinoco Company, Limited, and the Orinoco Steamship Company, not only does the Government of Venezuela find no justifiable explanation of that request, but it considers it strange, and it is even surprised thereat, because, when the awards referred to were made, neither the aforesaid Agent or Representative of the Government of the United States in the Venezelan-American Mixed Commission, nor your excellency's Government itself, made any manifestation of protest against those decisions which were given by the Honorable Mr. Harry Barge, who, as Umpire chosen by Her Majesty the Queen of the Netherlands, had the especial and sole mission of deciding any question upon which the respective Commissioners of Venezuela and the United States could not agree, as happened in the cases referred to.

Not only was that protest not made before the Venezuelan-American Mixed Commission when the respective awards were given on February 20 and April 12, 1904, nor in the limited time which by customary usage and by practice established by International Law, is granted, in order to formulate said protests, but the amounts awarded by the Umpire in favor of the Orinoco Steamship Company of Twenty-eight thousand, two hundred and twenty-four dollars and ninety-three cents ($28,224.93) and in favor of the Orinoco Company, Limited, of Twenty-six thousand, six hundred and twenty dollars ($26,620), figure since then as part of the sum which the Government of Venezuela owes to that of the United States and to that of other nations, in compliance with the awards made by the Mixed Commissions assembled in Caracas in 1903, by reason of which it must distribute among those creditor nations proportionately thirty per cent of the customs revenues of LaGuaira and Puerto Cabello, after finishing the payments to the creditor nations that obtained preferential treatment in conformity with the decision of the Hague tribunal.

It is, therefore, surprising that your excellency's Government, three years after those awards were given, should assume the attitude it now assumes with respect to them, there being in no manner either reason, or justice, or right on its part.

As for the Government of Venezuela controverting the claim of the Umpire in the Venezuelan-Belgium Mixed Commission, in the case of the Compagnie Générale des Eaux de Caracas, and that of the Venezuelan-Mexican Mixed Commission in the case of the claim of Messrs. Martinez del Rio Hermanos, your excellency's Government gives no sup-

porting reasons for establishing the parity of the cases, since the protest of the Representative of the Venezuelan Government in these cases was made on the very same day the decisions were given, owing to the fact of their having been given in opposition to the strict provisions of the respective Protocols which fixed the jurisdiction of the Mixed Commission; and in consequence of that attitude, the Government immediately addressed the Representative of Belgium in an official note accompanying the protest sent to the Mixed Commission by the Attorney General of the Nation; and, furthermore, it immediately afterwards accredited a Minister to Brussels, with the prime object of giving validity without delay to the most righteous and powerful reasons upon which Venezuela founded her right to request a revision of that decision, and so that they might opportunely be studied and considered by the Government of His Majesty the King, as he was a friend of the Venezuelan Government.

As regards the protest against the award in the claim of Messrs. Martinez del Rio Hermanos, caused by the Umpire having left undecided the counter charges of the Government of Venezuela against that of Mexico, submitted by mutual accord to be examined and decided by the Commissioners, the aforesaid Umpire, having refused to receive such protest, alleging that the work of the Commission had already closed, and as there existed no diplomatic representation of the Republic of Mexico in this city, the Government of Venezuela decided to advise its Special Agent in the Hague tribunal, then assembled, to let the powers there represented know the justificatory grounds of that protest against a decision that weighed enormously on the fiscal interests of the Republic—detrimental not only to said interests, but also to the conventions with the other creditor nations. The Commissioner of Venezuela complied with this injunction, as appears in the Proces Verbal X of the session held on the 10th day of November, 1903,—that is, one month and eight days after the award referred to was given.

As it appears in the note of your excellency, to which I confine myself, and in the memorandum of March 30th last, the request to revise the award in the case of the Manoa Company, Limited, is not now suggested by your excellency's Government on behalf of those parties who appear as the ones interested in such claim, and who were the real claimants against the Government of Venezuela, but it does so on behalf of a new person, called the "Orinoco Corporation," of which there was even no knowledge at the time the claim was presented, nor at the time of its examination and decision.

Such Orinoco Corporation, calling itself the assignee of rights that were declared by the Umpire without any foundation whatever, in the claims made by the Manoa Company, Limited, the Orinoco Company, Limited, and George Turnbull, and alleging facts that occurred subsequent to the award in question, that is, in the year 1906, presents the anomaly that, by changing the name of the Orinoco Company, Limited, for that of the Orinoco Corporation, questions more than twenty years old, which were the especial object for examination and decision of the Umpire, the Honorable Mr. Barge, are renewed, it being thus pretended that acts which occurred subsequent to said decision, and as a consequence thereof, should be put forward to destroy its validity and firmness, so that what is the consequence of the award should serve to annul it, or that the principal should depend upon the accessory, or the cause upon the effect.

The decision of the Honorable Mr. Barge established as an incontrovertible principle in the Manoa and other claims, that the judicial questions pertinent to the recission of contracts, made between private parties and Governments, are of the exclusive jurisdiction of the tribunals of the country with whose Government contracts were signed, and in this it is also in accordance with the decision given in Northfield, Vt., by the Honorable Judge, Mr. Plumley, as Umpire in the Venezuelan-French Mixed

Commission in a similar case. It was in regard to that principle that both Umpires declared that the examination and decision of those points were outside of their jurisdiction, referring them to the tribunals of justice of Venezuela. If your excellency's Government invokes, as it does, the force of the award of the Honorable Mr. Barge to pretend that the Venezuelan Government could not perform certain acts subsequent to such award without the Federal Court of Cassation first deciding the recission of the Fitzgerald contract, of which the Manoa Company, Limited, was the assignee, it is by that very fact making valid the force and authority of that upon which decision was given by the Umpire, and it is inconceivable that it should attempt, at the same time, a revision of said decision in favor of the Orinoco Corporation.

The attitude of your excellency's Government is such a severe one, in holding that the decision of the Honorable Mr. Barge "rests upon such serious errors of law and fact and reveals such a complete disregard of the terms of the protocol as well as of the principles of justice and equity, common not only to international law, but likewise to the law of all civilized States," that the Government of Venezuela, taking into consideration who it was that performed the high functions of Umpire by election of her Majesty, Queen Wilhelmina, at the request of both Governments, now performs its duty towards international law and to the respect due to its principles, by rejecting views of that character.

It cannot be said of a decision, in a case of this nature, that it is *manifestly unjust, and that it departs from the laws of civilized states,* when it has been pronounced in a case which the interested parties themselves and the Commissioners of the respective Governments have made doubtful through the discrepancy of their opinions, and which was, therefore, agreed to be submitted to the decision of an impartial Umpire.

Much less justifiable is the statement of your excellency's Government concerning those awards, since it was Mr. Herbert W. Bowen, then Minister of the United States in Caracas, who stipulated the agreements of Protocol creating the Mixed Commissions alluded to, and the Government of the Republic has devoted its attention and efforts, as your excellency knows, to compliance with those arrangements, and as, in full justice, it must be appreciated by the Governments to which it has most punctually paid the sums that the Republic was condemned to pay by the numerous decisions of the Mixed Commissions.

In the case of the New York and Bermudez Company, it is indeed strange that your excellency's Government should request that of Venezuela to have the suits against the New York and Bermudez Company, which are still in progress, withdrawn from the Courts of the Republic, in order to make of it all, as it were, an accumulation or increase of claims against Venezuela by means of an action entirely diplomatic, when the Government of the Republic is sure that neither the Government of the United States, nor that of any other independent and sovereign nation would accept a similar proceeding.

Your excellency's Government overlooks the fact universally made known by publications of the North American Press, and proved in the trial now in progress in the Civil Court of First Instance of this section of the Federal District, of the active part which the New York & Bermudez Company took against the Government of Venezuela in the revolution called "Libertadora," which fact alone, of its having been an accomplice, would have afforded grounds for another Government, not so patient and respectful of ordinary judicial steps and procedures, to have dictated immediately rigorous executive measures of justice and of strict right, which faculty the Executive Power possesses in cases of armed rebellion against the constituted authorities, suspending for that purpose the rights and securities which would prove incompatible, in their practice, with the defence of a country for the restoration of order.

Brought before the proper Courts by the Attorney General of the Re-

public, the suits against the New York and Bermudez Company for the liabilities that affect it as assignee of Hamilton's contract, in having failed to comply with its obligations, and as an accomplice of the aforesaid "Libertadora" revolution, the procedures in both cases have been entirely in accordance with the laws of the country; and, in order to invoke a denial of justice, it would be absolutely necessary that the proof of that denial of justice should first be presented. Can your excellency's Government, without irrefutable proofs, undertake the defence of said Company and assume the aggressive attitude adopted in characterizing the suits brought against the New York & Bermudez Company as *arbitrary and in gross violation of the Venezuelan law?* Can it forget that the Company it patronizes has become guilty of the crime of insurrection before the Government of Venezuela, and that in violating, as it has violated, the laws of neutrality towards a country that is a friend of your excellency's Government, it has incurred grave responsibilities, which the very laws of the United States enjoin on their citizens with severe justice?

The Government of Venezuela does not suppose that the Government of your excellency wishes to make itself responsible for the revolutionary acts committed by the New York and Bermudez Company, and for the wrongs and damages occasioned to the Republic in consequence of said acts. That is the reason why the judicial action of the Representative of the Nation has been limited solely and directly against the New York and Bermudez Company, and not against your excellency's Government, maintaining the precautionary embargo of the asphalt mine until the results of the law-suits have been carried into effect.

The statement remains then, that the property of the New York and Bermudez Company has not been attacked by the Government of Venezuela, but it has been the Company itself, through its own acts, that has placed the Government of the Republic under the necessity of taking judicial proceedings against it; and those cases have been and are still being debated before the proper tribunals with all the amplitude of defence and every security granted by the laws, without any alleged denial of justice being proved; and, therefore, there cannot have been, nor is there, any corresponding application of diplomatic procedure in this case.

Lastly, I have to state to your excellency that the matter of the claim of the United States and Venezuela Company bears great similarity to that of the New York and Bermudez Company, as regards the question of the recission of the contract, which your excellency states has been adopted by said Company, alleging certain procedures of the Government of Venezuela. There does exist a cardinal difference with respect to the procedure adopted, in one way or another, in both cases, for while the Government of Venezuela, through the Representative of the Nation, has submitted the questions arising from the contract of which the New York and Bermudez Company was the assignee, to judgment before the competent tribunal, your excellency's Government endeavors to withdraw the question of the recission of the so-called Crichfield contract, and that of wrongs and damages resulting therefrom, from the jurisdiction of the Courts of Justice of Venezuela, thus paying no attention to the laws of the Republic, which are the only ones applicable in the matter of contracts, when these are made and must be performed in its own territory. By attempting to substitute diplomatic endeavors for the legal action of recission that belongs to the contracting parties, the principles and laws universally established are manifestly violated, the power and jurisdiction of the tribunals of the Republic are impaired, and, above all, there is a breach of the express clause of the contract itself, which literally says: "The doubts and controversies that may arise out of the interpretation and execution of this contract, shall be decided by the tribunals of the Republic, according to its laws; and in no case shall they be made the subject of international claims."

Your excellency's Government involves itself in a remarkable contradiction when it invokes decisions of the Federal Court of Venezuela, and even of international tribunals, that have declared that contracts made by the Federal Executive *cannot be destroyed by decree of the Executive itself, and that the cancellation of a concession so granted is a matter for judicial and not political action,* and when, as it does in the case of the Crichfield concession, it pretends that the Government of Venezuela should admit the recission of that contract as adopted by the interested Company, disregarding for that purpose all judicial procedure. Such repudiation and recission of the contract, presented in your excellency's note, as adopted by the United States and Venezuela Company, alleging that no satisfactory arrangement has been reached with the Government of Venezuela, the Federal Executive, were it to agree to it, by dispensing with judicial discussion before the proper tribunals in order that damages and losses might be determined before an international tribunal, **would be usurping the constitutional faculties of the judicial power, which, as your excellency well knows, is the third power of the Republic whose prerogatives and jurisdiction cannot be encroached upon by the Executive Power.**

It was very likely on this account that your excellency and the Representative of the United States and Venezuela Company treated verbally and directly with the President of the Republic, and agreed upon a minute of arrangement which was deemed satisfactory, but which eventually remained in suspense by order of the Government of the United States, in accordance with private representations made at that time.

No doubt since then was commenced the outlining of the attitude now adopted against the Government, which has ever confided in the greatest friendship of your excellency's Government, among those which have favored it with their good and most cordial relations.

In view of these antecedents, and of the very good disposition which your excellency constantly knows and sees, the Government of Venezuela hopes that your excellency will please explain to your Government those circumstances which may tend to promote the interests of both countries and their good relations of friendship, that result being the most desirable in the mission confided to those invested with a diplomatic charge to a Government that really prides itself on cultivating with that of other friendly nations the most cordial relations, ever making them more steadfast on the ample and secure basis of equity, justice and right.

During the month of July, 1907, the Venezuelan Government had paid in full the claims of Great Britain, Germany and Italy, these nations having been given preferential treatment by the Hague tribunal. After these payments were completed, the thirty per cent (30) of the customs revenues of LaGuaira and Puerto Cabello, which had previously been used to liquidate the claims of the blockading powers, was applied in payment of the claims of the non-blockading powers, which were adjusted by the Mixed Commissions of 1903. Upon the payment of the first instalment on account of the amount due the United States, the following diplomatic correspondence took place:

Minister Russell to the Minister for Foreign Affairs, Sept. 20, 1907.

Referring to my communication of the 16th instant, I have the honor to inform your excellency that I have collected from the Bank of Venezuela the sum of Bs. 33,771.70, a payment for the month of August, 1907, on account of the sum due the United States under the awards of the Mixed Commission of 1903.

In accepting this first instalment of the awards of the Mixed Commission of 1903, my Government instructs me to say, that it insists upon a revision of the award in the case of the Orinoco Steamship Company, and that pending final settlement of this question no portion of any moneys which may be paid by Venezuela will be considered as paid on account of, or applicable to that award.

As to the case of the Orinoco Company, Limited, however, my Government does not share the view of the Government of Venezuela that the acceptance of the sum awarded in this case is inconsistent with the position of the United States as set forth in my memorandum of March 30th, and my notes of July 9th and August 13th.

[Translation.]

The Minister for Foreign Affairs to Minister Russell, September 21, 1907.

I have received your communication of yesterday, in which you inform me that you have received from the Bank of Venezuela the sum of Thirty-three thousand, seven hundred and seventy-one Bolivares and seventy Centavos (B. 33,771.70), payment for the month of August on account of the sum owed to the United States under the awards of the Mixed Commission of 1903.

In continuation you add that by accepting this first instalment owed by the Venezuelan Government, under the awards of the Mixed Commission of 1903, your Government has instructed you to insist upon a revision of the award in the case of the Orinoco Steamship Company, and that while the definite settlement of this question is pending, no sum paid by Venezuela will be considered as paid on account of, or applicable to this award.

Your excellency terminates the communication, to which I refer, by saying that in reference to the Orinoco Company, Limited, your Government does not have the same opinion as the Venezuelan Government on this subject,—that is, that the acceptance of the sum adjudged in this case is incompatible with the attitude of the United States, as expressed in your memorandum of March 30th, and in your notes of July 9th and August 13th.

In replying categorically to your excellency's note, the Venezuelan Government is obliged to quote the following declaration made by your excellency:

"I have collected from the Bank of Venezuela the sum of Thirty-three thousand, seven hundred and seventy-one Bolivares and seventy Centavos (B. 33,771.70), as payment for the month of August, 1907, *on account of the sum due the United States under the awards of the Mixed Commission of 1903.*"

And further:

"In accepting this first instalment *of the award of the Mixed Commission of 1903*, my Government instructs me to say," etc.

The receipt that your excellency has given to the Bank for Thirty-three thousand, seven hundred and seventy-one Bolivares and seventy Centavos (B. 33,771.70) which your excellency has collected from the Bank, has for this Government the following meaning: That your excellency, acting in your character as the Representative of the Government of the United States, which is a creditor of the Venezuelan Government under the awards of the Mixed Commission created by the Washington Protocol of February 17, 1903, has received from the Bank of Venezuela the sum of Thirty-three thousand, seven hundred and seventy-one Bolivares and seventy Centavos (B. 33,771.70), which is the first instalment owed by the Venezuelan Government under the said awards; this instalment being equivalent to 10.752 per cent of the sum collected in the month of August last, of the 30 per cent of the receipts of the LaGuaira and Puerto Cabello custom houses, the said 30 per cent being set aside for the payment of all the awards of the Venezuelan-American Mixed Commission, and those of

the other Commissions, in strict fulfillment of the said Protocol of February 17, 1903, and of the final judgment of the Hague tribunal of February 22, 1904.

The Government of Venezuela has not failed to take due note of your excellency's communication in reference to the total amount received from the Bank of Venezuela as the first instalment of the amount owed by this Government, under all the awards of the Venezuelan-American Mixed Commission, this sum, and all the other amounts which the Bank will pay monthly, with the same object in view, being set aside solely and exclusively for the special payment of all the awards of the said Mixed Commission.

The Venezuelan Government is not concerned with the manner in which the amounts already received, and to be received, are applied by your Government, after they have been formally received and are in the possession of your excellency's Government. It is sufficient for the discharge of its liabilities for the Government of Venezuela to pay to your Government the amounts awarded by the Venezuelan-American Mixed Commission, in order to comply with the terms of the Protocols signed in Washington February 17, 1903, and in conformity with the final judgment of the Hague tribunal of February 22, 1904, ordering the Government of Venezuela, under the awards of the Mixed Commissions of 1903, to make the payments to the non-blockading nations, after the claims of Germany, England and Italy had been paid.

Your excellency's receipt for the sum already mentioned is proof that the Government of Venezuela on its part has complied with its obligation to distribute among the creditor nations, under all of the awards of the Mixed Commission, the monthly instalment to which the 30 per cent of the receipts of the custom houses of LaGuaira and Puerto Cabello amount, in the proportions that must be observed among the sums which compose the awards in favor of each, and in relation to the total amounts of the awards of the several commissions.

Your excellency was notified of that proportion at the proper time by this Department, in a note of August 27th, No. 924, fixing 10.752 per cent, which corresponds to the sum of Four hundred and thirty-six thousand, four hundred and forty-one dollars and ninety cents ($436.441.90), the total of all the awards of the Venezuelan-American Mixed Commission, and the receipt of which intimation your excellency acknowledged in your note of the 29th of the same month.

Your excellency informs me that your Government insists on a revision of the award in the case of the Orinoco Steamship Company, and considers the definitive settlement of this question to be still pending.

The Government of Venezuela has never given your Government any reason to believe that this question is pending; because, in the memorandum of April 27, 1907, and in the notes of July 24th and August 20th of the same year, my Government, answering respectively your excellency's memorandum notes of March 30th, July 9th and August 13th, did not agree to the request of your Government for the revision of the arbitral awards in the cases of the Orinoco Steamship Company, the Manoa Company, Limited, and the Orinoco Company, Limited, for the reasons therein expressed, definitely closing the discussion on that matter.

Observing the insistence of your Government in this matter, the Government of Venezuela thinks it proper to call the attention of your honorable Government to the context of the two notes of March 24th and 26th, 1903, which his excellency, Mr. John Hay, then Secretary of State, addressed to his excellency Senor don Rafael S. López, Minister of Salvador, in reply to the memorandum of said Minister, in which he solicited revision or reconsideration of the award given by Sir Henry Strong and the Honorable Mr. Dickinson, in the case of the Salvador Commercial Company and others against the Salvador Government. The said notes are, as follows:

" Department of State,
March 24, 1903.

" The undersigned, Secretary of State, has the honor to inform the Minister of Salvador, after due consideration of the Minister's memorandum of March 4, 1903, that the Government of the United States finds therein no reason for altering the opinion heretofore expressed, that it has no power to revise or reopen the award made in the case of the Salvador Commercial Company, et al., against the Government of Salvador. A failure to comply with the award would, moreover, involve a grave discourtesy to the eminent arbitrators who sat in this case, and a serious injury to the cause of arbitration. The Government of the United States therefore expects compliance by the Government of Salvador with the terms of the Protocol of arbitration signed by her Executive and ratified by the National Assembly.

(Signed) John Hay.

To Senor don Rafael S. López, Minister of Salvador."

" Department of State,
March 26, 1903.

Sir:—I have the honor to acknowledge the receipt of your note of the 24th instant, which has received consideration.

The Department does not consider the principles and authorities which you invoke in support of your contention that the award made by the Arbitrators in the case of the Salvador Commercial Company, et al., against the Government of Salvador, is illegal and void, as in any wise applicable to the case. I perceive no ground to change the views expressed in my note of the 24th inst. As indicated in that note, this Government expects the Salvador Government to comply with the terms of the Protocol of arbitration.

Accept, Sir, etc.,
(Signed) John Hay."

These laconic and final replies of his excellency, Mr. Hay, refusing absolutely to revise the Strong-Dickinson award, are presented to your Government by the Government of Venezuela with all the authority they represent, bearing as they do the signature of the eminent statesman, who, by a striking coincidence, also signed the Protocol of February 17, 1903, under which the claims of the Orinoco Steamship Company and the Manoa Company, Limited, were submitted to Commissioners, and in the case of their disagreement, to an Umpire to be selected by the Queen of Holland, stipulating that those awards would be definite and conclusive.

CHAPTER IV.

IS CASTRO RIGHT OR WRONG?

The various claims and demands which the State Department has been somewhat urgently presenting to Venezuela may be summarized briefly, as follows:

Summary of Claims Against Venezuela.

1. Indemnity in the sum of $25,000 for the expulsion of A. F. Jaurett from Venezuela.

2. For an arbitration at the Hague (unless another tribunal is agreed upon) to determine (a) whether the contract rights of the Orinoco Corporation have been destroyed or the value of its concession injured by alleged unjust acts of the Venezuelan Government, (b) whether any loss has been caused to the Manoa Company, Limited, to the Orinoco Company, Limited, and to the Orinoco Corporation, or to any of them, through alleged opposition or usurpations against them while they have been in the partial or entire enjoyment of their contract rights under the Fitzgerald concession, and (c) to fix the damages arising from said alleged acts.

3. For the **re-opening and re-submission to a new arbitration** of the entire claim of the Orinoco Steamship Company.

4. For an international arbitration to investigate the alleged rights of the New York and Bermudez Company and to establish its losses in consequence of alleged injustice done to the Company.

5. That the Venezuelan Government shall either (a) withdraw its opposition to the alleged right of the United States and Venezuela Company to carry on its business in accordance with the terms of the concession granted to one Crichfield, or (b) that the rights of the Company shall be determined and damages fixed by an arbitration.

Since the foregoing claims have been grouped and presented to Venezuela in one document, the writer, in studying the issues involved in the case of the New York and Bermudez Company, has acquired some information and data concerning the other cases, and has found that, in those cases, as well as in the asphalt case, President Castro's position is based upon the soundest principles of right and justice.

The following are some of the facts and arguments in opposition to the claims above mentioned:

Albert F. Jaurett for several years published the "Venezuelan Herald," a newspaper in Caracas which appeared at irregular intervals, the printing of the paper being done for Jaurett's account by the Government Printing Office. He also represented the New York "Herald," and for a time was the Caracas correspondent for the Associated Press. He was employed at sundry times by the Asphalt Trust to publish articles favorable to its interests, and just prior to the legal proceedings against the Trust in 1904, claimed that there was owing to him about $8,000 for work done for the Trust, which he was unable to collect. After the legal proceedings against the Company were commenced by the Venezuelan Government, in July, 1904, Jaurett secured a settlement of his claim, and resumed his occupation as Caracas press agent for the Trust. He became so offensive on account of his abuse of Castro and the Venezuelan Government and Courts, and more particularly on account of the false and alarming dispatches which he sent to the American and European press, with the object of causing serious damage to Venezuelan interests, that he was declared to be an undesirable inhabitant, and was expelled from the Country. Venezuela's right to make the expulsion is admitted, but only the method is questioned.

Claim I. Jaurett.

Admitting, for the purpose of argument, the contention regarding the manner of his expulsion, why has our State Department taken up the diplomatic cudgels on behalf of Jaurett? Is it because he was the press agent for the Asphalt Trust, or is it because he was a close friend of Mr. Loomis, who was the First Assistant Secretary of State when Jaurett's claim was taken in hand by the Department? The investigation of Secretary Taft in 1905 showed that a close intimacy, financial and otherwise, existed between Loomis and Jaurett when the former was stationed in Caracas. **But what right has Jaurett to the protection of the United States anyway? Is he an American citizen? There is nothing in his record to show that he ever even had the opportunity legitimately to acquire the rights of citizenship in the United States.**

Prior to Jaurett's advent in Venezuela he appears to have had a pretty stormy career in France, Panama and Mexico.

A prominent citizen of the City of Mexico gives the following interesting information regarding Jaurett:

[Telegram.]

Jaurett citizen and officer French army. Deserted account supposed money irregularities with troop. Went Panama under De Lesseps. On Company's failure left there taking their money. Came to Mexico as representative Fives-Litte Company of Paris; embezzled $40,000 from them. Also embezzled and borrowed from others. Gambled all security. Left Mexico where he was criminally liable. Went from here about April ninety-six to Miami, Florida. Lived there three months—longest time he was ever in America. Thence direct to Caracas.

[Letter from same party.]

Mexico City, D. F., November 17, 1904.

.....

In answer to your wire, regarding A. F. Jaurett, I sent you the enclosed confirmation. I shortened it as much as I could, but even then it was very long. I personally knew Jaurett in 1894 and remember quite well the scandal his departure made, but I, like many others with whom I have talked, remembered it only in a general way. I, however, went to see his old business and social friend, Mr. Duncan Bankhardt, now General Agent of the B. & O. S. W., No. 12 Gante St., this City, who told me the whole story, as follows:

A. F. Jaurett is, or was at the time he was here, a citizen of France. He was an officer in the French army, and was a deserter. His leaving was supposed to have been occasioned on account of financial irregularities with his troop or army money. He therefore could never return to France. He then went to Panama, and got a position with the De Lesseps Company, then constructing the Panama Canal. When the "crash" came and the Company failed, Jaurett, like many others, took all the ready money of the Company's that he could lay his hands on, and came to Mexico. Here he got in with a Frenchman, Count Dupres, and opened an office; finally he was appointed the representative of the "Cie. Fives-Litte, of Rue Caumartin, Paris, France," who are manufacturers of sugar machinery. Afterwards he (Jaurett) started a monthly paper devoted to Mexico, her products and principally the sugar industry. He was an inveterate and foolish gambler, and after the death of Dupres, which occurred in '94, he simply lost his head and in a very short time turned up with a shortage of $45,000; that in addition to this, he (Bankhardt) had gone to his home in Brazil, and left $1,800 with Jaurett to provide for the wants of his family during his absence. He says Jaurett only gave his wife $75 and the rest he appropriated and that before he could get a settlement out of him, he "skipped" leaving his wife behind to settle up affairs. The only available asset was this paper, which Mrs. Jaurett turned over to him and, as the paper was worth more than $1,725, he paid her a difference of $1,200. Jaurett's gambling was the cause of his downfall here, and he did fall hard, for he left owing many, and had gotten much money by mis-representation. I should think his stealings, embezzlement and debts would amount to some $60,000. There is no indictment pending against him here, but he could be prosecuted by many, should he return, and did they care to. He has separated from his wife, and she is living now in France. The separation I understand was entirely agreeable and amicable. When she first came here to live, she was the wife of his friend, the Count Dupres, and after his death Jaurett married her, thus succeeding to Dupres' money and business, and this, of course, gave him the entire representation of the Cie. Fives-Litte and others, and thus enabled him to get hold of their money. His reputation in these parts is certainly most "shady," and I have found nobody, though I have talked with a number of prominent Frenchmen, that thought him anything else but a thief. All of the above can be easily verified.

Yours very truly,

.....

P. S.—Through the help and advice of his friends, he was able to slip out of Mexico before being criminally prosecuted, which was soon to come and certainly would have come had he not left.

From "El Constitucional," Caracas, May 25, 1905.
[Translation.]

SWINDLE AND INDICTMENT OF JAURETT IN MEXICO.

SECOND CRIMINAL COURT, MEXICO.

The advocate, Manuel F. de la Hoz, Judge of the Second Criminal Court, certifies:

That, in the Court under my charge there exists an indictment filed on the 12th of February, 1896, for the crime of swindling against Alberto F. Jaurett, which indictment is permanently reserved in the archives of this court, because the accused has eluded the act of justice.

I certify, also, that the accusation was presented by Mr. Eugene Durand, an engineer of the Compania de Fives-Litte, manufacturers of engineering machinery of France, accusing A. F. Jaurett of having disposed of 40,000 francs which were paid to him by Messrs. Sebastian de Mier and Manuel Corcuera, as the price of some machinery which they had purchased from the defrauded Company. There follows, also, the accusation by Mr. Bermanos, special representative of the same Company, that he could not obtain restitution of the stolen funds, the fugitive having disappeared in spite of the investigations of the police both in the Capitol as well as in the frontier states, for which reason the fugitive had escaped, since it has not been possible to secure his extradition, because there is no treaty with the Republic of Venezuela where he is actually known to be.

And at the solicitation of Mr. J. E. Hileman I execute the present in the City of Mexico on the 25th day of October, 1897.

(Signed) Manuel F. de la Hoz.

There is a seal which says 'Second Criminal Court Mexico' and a stamp which says "Federal 1897-1898," of the value of fifty cents.

One wonders what evidence of Jaurett's American citizenship was filed with the Department of State, or, if naturalization papers were presented, where and by what methods they were obtained?

Mr. Gaillard Hunt, Chief of the Bureau of Citizenship, Department of State, in an article entitled "The New Citizenship Law," published in the North American Review, July 5, 1907, says:

The Citizenship Law was based upon a report made to Secretary Root by a board of officers of his Department, * * * * * From this report sprang a bill introduced in the House by the Hon. James Breck Perkins of New York, which became a law on March 2nd. * * * * * *

That the naturalization laws of the United States have always offered an easy avenue of approach to citizenship, and that the way was carelessly guarded, are facts which have been well known in other countries; and the consequence has been that many foreigners have come here with the express purpose of securing naturalization and going away immediately afterwards. * * * * * * The inevitable consequence has been that we have had a constantly increasing number of so-called American citizens living abroad—men who have lived in the United States for only five years and in many cases have fraudulently secured naturalization papers after less than five years of residence; who never were really domiciled here; who never have performed any of the duties of American citizenship and who never intended to do so. * * * * * They hold in their hands certificates which proclaim them to be American citizens; they are often loud in their assertions of loyalty to the United States; they claim rights, but perform no corresponding duties. * * * * *

It may be urged that this new citizenship law is not retroactive, that it applies only to naturalizations subsequent to the passage of the act and that Jaurett's case must be considered under the former law. That may be true, but, in view of the doubt that has been cast upon the validity of Jaurett's claim to citizenship, in

view of the man's apparently bad record and in view of the advanced stand that has been taken by the United States through the passage of the new citizenship law, can our State Department afford to continue to press Venezuela to pay him $25,000, or any other sum?

Claim II. Orinoco Corporation.

This claim grows out of conflicting concessions granted by Guzman Blanco over twenty years ago for the exploitation of certain territory of the Delta of the Orinoco,—one to C. C. Fitzgerald in 1883 and one to George Turnbull in 1886. Both Fitzgerald and Turnbull were American citizens. Both were speculative adventurers whose only interest was to unload their concessions upon American capitalists at a good profit to themselves. Very little, if anything, has ever been done in the way of exploitation under either concession. Litigation and manipulation have been about the only industries pursued, while the Venezuelan Government has had no benefit whatever, either in revenue or in the development of the commercial resources of the territory in dispute.

The Venezuelan Government maintains that the settlement of the differences arising out of the conflicting concessions is a matter for judicial determination by the Courts of Venezuela and is not a subject or motive for international reclamations.

Mr. Barge, the umpire of the American-Venezuelan Arbitrations under the protocol of 1903, decided the no-reclamation clause to be valid, and that the Manoa Company's remedy for any alleged grievances against the Government lay in the courts of that country; in other words, it is *res adjudicata* so far as the Government of the United States is concerned.

The interest behind the claim of the Orinoco Corporation is represented in the person of Mr. Rudolf Dolge, who until recently was the American Consular Agent in Caracas, and who appeared in the Bowen-Loomis scandal as the friend and defender of Mr. Loomis.

Claim III. Orinoco Steamship Company.

It is unnecessary to consider the merits or demerits of this claim, since it was submitted in its entirety to the American-Venezuelan Mixed Commission under the Protocol of Agreement concluded February 17, 1903, for the arbitration of all claims possessed by citizens of the United States against the Republic of Venezuela.

In the matter of the Orinoco Steamship Company, the Commissioners failed to reach an agreement, and, as the protocol provided that in cases of disagreement an umpire should be appointed by Holland, Dr. Harry Barge was so selected to decide the disputed points. Out of claims of the

Steamship Company against Venezuela aggregating $1,401,558.03, Dr. Barge awarded the Company the sum of $28,224.93, or about two per cent. of the total. This was the result of an international arbitration of the case of the Orinoco Steamship Company under a solemn compact signed by both the representatives of the United States and Venezuela, which provided "that the awards of the Commissioners, and in case they should not agree, those of the Arbitrator, shall be final and conclusive."

Other cases were decided under the same protocols, many of them in a manner decidedly disadvantageous and unsatisfactory to Venezuela, but Venezuela has accepted the awards against her in every case, and while some of them are felt to be unjust, she is now paying, in accordance with the agreements and decisions, millions of dollars in settlement.

President Castro justly takes the position that the case of the Orinoco Steamship Company is *res adjudicata,* and declines the request of the United States that it be re-opened and re-submitted to a new tribunal of arbitration. He pertinently suggested to Mr. Hay that there was no assurance that a new agreement or arbitration would be any more satisfactory, and that a re-opening of the case would not only show a lack of respect for the protocols of 1903, but would also be a reflection upon the honor of the Dutch umpire and of the Dutch nation which appointed him.

But what are we to think of the position taken by the United States in demanding arbitration of the cases of the Orinoco Corporation, of the New York and Bermudez Company and of the United States and Venezuela Company in the same breath that she refuses to submit to the findings of a tribunal of arbitration in the Orinoco Steamship Company case? What must President Castro and the people of Venezuela think of the good faith of the United States? What must the diplomats of the world think of our preachments in behalf of arbitration at the Hague Peace Conference? Is an arbitration final only when it is in favor of the stronger nation?

President Castro can well look with the gravest distrust upon these demands for arbitration, knowing full well that if the decisions should be in favor of Venezuela there would be every likelihood of further demands from the United States for new arbitrations until the findings should be in favor of the United States, when Venezuela would be powerless to resist.

The parties pushing the claim of the Orinoco Steamship Company, and their attorneys, naturally feel that the Arbitrator in the award made under the protocol of 1903, did them an injustice, and, therefore, have used every effort to get the Department of State to persuade Venezuela into consenting to the re-opening of the entire matter. Was there ever a defeated litigant who has not felt that justice has been denied to him, or whose attorney could not point out wherein the judge had erred?

Venezuela protested against the injustice of the Mexican and Belgian awards, but she has accepted them as final and is paying her debts in accordance with the protocols. The sarcastic "fling" at Venezuela on this account is wholly unjustifiable. Equally so is the citation of a previous case, wherein the United States at the request of Venezuela set aside the awards of the Commission of the United States and Venezuela of 1866, and appointed a new commission, in accordance with a convention signed in 1888, with the result of saving to Venezuela a large sum of money as compared with the awards of the first commission. The reason why the United States consented to a re-arbitration of the 1866 awards is ingeniously omitted.

Mr. R. Floyd Clarke, in the American Journal of International Law for April, 1907, alludes to the case cited, as follows:

Under the convention between the United States and Venezuela of April 25, 1866, a joint commission passed on forty-nine claims against Venezuela to the nominal amount of $4,823,273.31 (2 Moore Int. Arb. 1660). It made awards upon twenty-four claims to the amount of $1,253,310.30, and rejected twenty-five claims (id).

On February 12, 1869, the Venezuelan Government made a protest against the awards to the United States Government, claiming fraud, etc. (id, 1660).

The matter was investigated and re-investigated. Congress finally adopted a resolution directing the Secretary of State to suspend the distribution of the sums paid by Venezuela on account of the awards, and recommending the creation of a new commission (id. 1661).

The charges against the Commission as developed in the investigation were to the effect that a conspiracy was entered into between the United States Commissioner, the United States Minister at Caracas, and his brother-in-law to defraud the claimants by exacting of them a large proportion of their awards in the form of attorney's fees; that the brother-in-law thus obtained contracts with claimants to represent them before the Commission for 40 to 60 per cent. of whatever might be awarded; that the selection of the umpire was made in an irregular manner; and that on the claims which the brother-in-law represented, awards were made to the amount of more than $850,000, while many meritorious claims were rejected; that the certificates of the award were made in small amounts payable to bearer and were withdrawn by the United States Commissioner, and after the claimants received their proportion under their contract with the brother-in-law, **the balance was divided between the United States Commissioner, the United States Minister at Caracas, his brother-in-law and the Umpire** (id, 1662).

The President, in May, 1882, sent Congress a special message in regard to the matter. Thereupon the Committee on Foreign Affairs of the House of Representatives made a report stating that the former Commission was a conspiracy; its proceedings were tainted with fraud; that fraud affects its entire proceedings; that its decisions were a nullity and that a new Commission be appointed to pass *de novo* on the claims. Accordingly a joint resolution to that effect was passed in March, 1883. (Id. 1664).

Thereupon a new Commission was appointed which passed upon the old claims and others then presented.

It is a matter of satisfaction that the foregoing is the only known case of apparently proven fraud on the part of arbitrators in the history of international arbitration.

Manifestly the choice of a precedent in support of the argument for the re-opening of the Orinoco Steamship Case was quite unfortunate. It is also manifest that Venezuela has had a very bitter experience in her dealings with the United States in the past, dating from the Arbitration of 1866 down to and including the diplomatic scandal of 1905, and the several instances of bad faith and corruption on the part of representatives of the United States in the past give rise to serious suspicions in the present negotiations, especially so when President Castro is fully convinced that our State Department should have knowledge of the uncleanness and taint attached to every one of the cases mentioned in the communication of February 28, 1907.

The Orinoco Steamship Company is supposed to be owned principally by Mr. R. Morgan Olcott, who is closely related to Congressman J. Van Vechten Olcott, of New York, and to Ex-District Attorney, W. M. K. Olcott.

Claim IV. New York and Bermudez Company.

The action taken by the Government of Venezuela against the New York and Bermudez Company in the proceedings for the cancellation of the Hamilton Concession, while not specifically based upon, nevertheless grew out of the knowledge secured by President Castro of the Company's participation in fomenting and assisting the Matos Rebellion. As the evidence quoted in the preceding pages conclusively establishes the charge against the Company and the Court of First Instance has pronounced the Company guilty, it is no longer pertinent to allude to this charge as an "alleged" participation, since it is now an actually proven and confessed fact. In other words, President Castro "has made good;" his charges were neither fictitious nor visionary.

It must be remembered that General Greene, who did not approve of the contribution to Matos, and Mr. Thomas, who refused to sign the check without a written order, knew conditions in Venezuela, through years of experience, while the Trust officials, who made the arrangement with Matos, as well as the Managing Director in Caracas, who sent Matos to New York with letters of introduction to General Andrews, had had little or no experience in Venezuelan affairs. Shortly after the $101,366.67 had been paid to Matos, Messrs. Greene and Thomas resigned. The present management of the New York and Bermudez Company is the same as that which was responsible for the Matos revolution.

As might have been expected time has demonstrated that the judgment of the experienced officers was correct, and that the aid given to Matos was a sad mistake for the Bermudez Company. Corporations like individuals sooner or later suffer the consequences of their own acts, and just now the Asphalt Trust seems

to be suffering from the bad judgment of its inexperienced officers.

The State Department has entirely ignored the treasonable acts of the Company, and has carefully omitted all reference to them in the exchange of diplomatic notes with Venezuela. So long as no decision had been rendered in the revolutionary suit, it was probably within the limits of diplomatic ethics to eliminate the revolutionary charge from the controversy and to confine the discussion to the cancellation suit. In the exposition of the alleged errors made by the Venezuelan Courts in deciding the cancellation suit, the Department relies upon two points, namely:

1—That the Second Additional Article was a separate and distinct contract from the original concession and was never approved by the Venezuelan Congress.

2—That the Company does not rely upon the Hamilton concession for its right of possession of the asphalt deposit in the State of Bermudez, but that it is entitled to hold the property by reason of its ownership of a mining title on the asphalt deposit and a definite title over the uncultivated lands which surround and are covered by the asphalt deposit.

The first contention takes issue on a question of fact, and surely it is difficult to see how any one could have better facilities to secure the facts than had the Venezuelan Courts.

In his report to Congress, 1885, the Minister of Fomento stated on page 4, as follows:—

"Contracts—Among the documents, marked number 1 to number 62, inclusive, are those documents (contracts) and resolutions modifying them. Several contracts, although already approved by the last Legislature, are inserted in this report on account of additions subsequently introduced into them."

The Hamilton Concession and its additional articles were covered in the above report which received the approval of Congress, thereby acquiring validity and the full force of law.

In the decision of May 20, 1905, the Court said, "that the principal part was approved by the National Congress during the session of 1884, as it appears from the records, and the accessory part was approved during the session of Congress of 1885, when considering and approving the special memorial of the Ministry of Fomento of the said year, in which the special attention of the legislative body is called to the additional contracts entered into posterior to the approval of the preceding Legislature."

Again, in the decision of the Only and Last Court of Claims of the Federal Court and Court of Cassation, affirming the previous decision, the following appears:

"* * * * * * * The additional clauses were all approved by the National Congress, as it appears from the decree of the 17th of April, 1886, and from the preliminary exposition of

the Memorial of the Ministry of Fomento submitted to the said Congress of 1885."

Nor is it possible to see how these additional articles can be considered other than as parts of and pertaining to the original concession. The claimant contends that "the Second Additional Article was a separate and distinct contract, which had no connection with the first contract nor with the First Additional Article; that it was simply a contract between the said Hamilton and the Venezuelan authorities. Separate and distinct in its origin, it has remained separate and distinct; therefore, it arose and fell by itself."

It is only recently that the separate contract contention has been invoked. The transfer from Hamilton to the Company shows that the additional articles were regarded as a part of the original contract, and the obligations of Hamilton under them were transferred with the privileges. They are styled "Additional Articles," not "Separate" but "Additional." If not additional to and partaking of the rights and obligations of the original concession, then they are "additional" to what? The very term used carries with it the understanding that existed between Hamilton and the Venezuelan Government, that these additional articles were to be considered in the light of rights and obligations that had been added to and made a part of the original concession, the same as if they had appeared in the body of that document and subject to all the stipulations and penalties thereof. They were agreed upon when Hamilton was seeking an extension of time in order to keep his concession alive.

The Venezuelan Court said "* * * * * * the additional articles [to the Hamilton contract] * * * are simply accessories which follow its legal and judicial fate."

As to the second essential point raised, namely, the mining and definite titles, these were disposed of by the decision of the High Federal Court on January 28, 1904, in the Warner-Quinlan suit, which is printed in full in the first chapter and which was rendered six months prior to the institution of the cancellation suit.

That decision recognizes the New York and Bermudez Company's right of possession to the asphalt deposit solely by virtue of the Hamilton concession. The court said:

"And whereas, the Hamilton contract having acquired the character of a law of the Republic by receiving the approval of the National Congress, that contract created for twenty-five years a special situation for the exploitation of the asphalt and other natural products existing in the old State of Bermudez, or in other words, the New York and Bermudez Company alone had the right to make the exploitation in a general manner in the terms of the contract and during the time prescribed," and again

"8. And whereas, the question of investigating whether, according to the testimony of the witnesses and the documents of

title and the plans put in, the mine 'Felicidad' and the asphalt lake which the Bermudez (Company) is exploiting are two distinct things or whether one is part of the other, has no essential importance, since whatever be the situation, what has just been said remains intact, namely, that in the territory of the old State of Bermudez no mining concessions of asphalt can be given while the right remains in force for the general exploitation of asphalt which, in that territory, belongs to the New York and Bermudez Company under the Hamilton contract."

Thus, in the Company's suit with Warner and Quinlan, the highest Venezuelan Court laid down the principle that the Hamilton contract alone gave the New York and Bermudez Company the right to exploit asphalt, and while that concession remained in force the Government was powerless to grant any right to mine asphalt in the State of Bermudez.

The following are copies of the mining title issued to A. H. Carner in 1888, and of the conveyance of said title to the New York and Bermudez Company:

[Translation.]

The President of the Republic, with the vote of the Federal Council.

Inasmuch as it appears that Mr. A. H. Carner, Secretary of the New York and Bermudez Company, has asked the Government to grant him the definitive title of property to an asphalt mine which, according to the rights that Article 23 of the Decree that regulates the Laws on the matter gives him, he has denounced before the Constitutional President of the State of Bermudez, the which mine is situate in the jurisdiction of the Parish Union, Village of Guariquen, in the Section of Cumana, of the State of Bermudez, at a distance of twenty kilometers to the southeast of the said village of Guariquen, and at one hundred and eighty meters above the level of the sea; having also proved this denunciation by presenting the provisory title to said mine, granted on the 22nd of October of this year, by the Constitutional President of the State; and having fulfilled the formalities prescribed by the Decree that regulates the Mining Law, dated August 3, 1887.

Has decided to grant to Mr. A. H. Carner, Secretary of the New York & Bermudez Company, the property of the said mine in all the extension that corresponds to it and with respect to all the asphalt deposits comprised in the same, in accordance with the legal denunciation, made before the said President of the State of Bermudez. The present title shall be registered in the proper Registry Office, and shall give the right to the holder of this concession and his successors for the term of ninety-nine years to the exploitation and enjoyment of the said mine, with the legal restrictions and without any mining tax on its produce, since it comes within the provisions of Article 40 of the Decree, already cited, that regulates the Mining Law. Given, signed, sealed and countersigned in the Federal Palace, Caracas, December 7th, 1888. Year 25th of the Law and 30th of the Federation. JUAN PABLO ROJAS PAUL.

(Countersigned) The Minister of Fomento,
VINCENTE CORONADO.

DEED, A. H. CARNER AND IDA E. CARNER, HIS WIFE, TO THE NEW YORK AND BERMUDEZ COMPANY.

Know all men by these presents, that, whereas by a certain grant or concession, dated the seventh day of December, 1888, the United States

of Venezuela did grant and convey to Ambrose H. Carner, Secretary of the New York and Bermudez Company, the party of the first part hereto, the definitive title to a certain lake or mine of asphalt, hereinafter more specifically set forth, in all its extension, and respecting all the deposits of asphalt that it contains, in accordance with the denunciation of law, made before the President of the State of Bermudez, in the said United States of Venezuela, which said grant or concession, by its terms gives to the said party of the first part and his successors, the right to explore and work the said mine for ninety-nine years; with the restrictions imposed by law; and which said concession further stipulates that the productions of said mine shall be free from any mining tax, as they are comprised in Article 40 of the Reglamentary Decree of Mines, then and now in force in the said United States of Venezuela:

Now, therefore, know ye, that we, the said Ambrose H. Carner and Ida E. Carner, his wife, in consideration of the sum of One Dollar, to us in hand paid, by the said New York & Bermudez Company, party of the second part, the receipt whereof is hereby acknowledged, have transferred, assigned and set over, and by these presents do transfer, assign and set over unto the said New York & Bermudez Company, and to its successors and assigns forever, the definitive title of propriety to a certain mine of asphalt, situated in the jurisdiction of the County of Union, Village of Guariquen, Section of Cumana, in the State of Bermudez, and the United States of Venezuela, and at one hundred and eighty meters above the level of the sea, giving and granting unto the said party of the second part the said mine in all its extension and respecting all of the deposit of asphalt it contains together with the right to explore and work said mine, for the period of ninety-nine years from the date of said grant or concession from the Government of Venezuela to the party of the first part, Ambrose H. Carner, as above set forth, to wit: the seventh day of December, 1888, it being understood that this assignment conveys with it only those rights and privileges which were conceded to the said party of the first part by the said grant above described.

In witness whereof, we have hereunto set our hands and seals this first day of August, one thousand eight hundred and ninety-three.

AMBROSE H. CARNER. (Seal)
IDA E. CARNER. (Seal)

Signed and sealed in the presence of
ANDREW HAMILTON,
Consulate of the United States of America,
Trinidad, B. W. I.

On this first day of August, 1893, before me personally came Ambrose H. Carner and Ida E. Carner, his wife, to me known and known to me to be the individuals described in and who executed the foregoing assignment, and they severally acknowledged to me that they executed the same.

Given under my hand and official seal the day and year above.

WM. P. PIERCE,
U. S. Consul.

(Seal)
U. S. C.
(Seal)
V. C.

The following is a translation (taken from a pamphlet published by the New York and Bermudez Company) of the Company's alleged title to wild lands:

UNITED STATES OF VENEZUELA, MINISTRY OF FOMENTO,
Department of Territorial Riches.

The formalities prescribed in the law of June 2d, 1882, and in the decree regulating the Law of Mines, both now in force, having been ful-

filled, the National Executive, with the affirmative vote of the Federal Council, has declared the adjudication, on this date, in favor of the New York & Bermudez Company, represented by their Secretary Mr. A. H. Carner, of one square league and fifty-four centesimals of another, of wild lands which form the surface of an asphalt mine which the said Company owns, the which lands are acquired for the uses of the exploitation of the said mine, situate in the Parish Union, District of Benitez, Section of Cumana in the State of Bermudez, and whose boundaries are: by the north, south, east and west, lands covered by thick groves of mangrove trees and swampy lands.

The adjudication has been made for the price of one thousand, four hundred and three bolivars, five centimals, in cash, the equivalent of three thousand seven hundred and ninety-two bolivars in bonds of the National Consolidated Debt of 5 per cent., which amount Mr. Carner, the Secretary of the Company, has paid in its name, at the office of the Commission of Public Credit; and the Government having decided that the title of property to the said lands be granted, the Minister of Fomento who signs declares in the name of the United States of Venezuela that, by virtue of the sale made, the dominion and property of the said lands is henceforward transferred in favor of the New York & Bermudez Company, with the declarations applicable, expressed in Article 6, 7 and 8 of the said law, which their letter and text authorize the present adjudication, and the terms of which articles must be considered as decisive clauses in the matter. Caracas, December 14th, 1888. 25th year of the Law and 30th of the Federation.

VINCENTE CORONADO.

Upon the foregoing, the following comments may be made:

First. It will be necessary to compare this translation with the original document in order to verify its true meaning and scope.

Second. On its face it does not appear to be a conveyance in fee simple, inasmuch as the property conveyed is described as being "of wild lands which form the *surface* of an asphalt mine which the Company owns," and "the which lands are acquired for the *uses of the exploitation* of the said mine," and because the words of conveyance, namely, "the dominion and property of the said lands is henceforward transferred in favor of the New York and Bermudez Company," are modified, or qualified by the following clause, namely: "with the declarations applicable, expressed in articles 6, 7 and 8 of the said law, which their letter and text authorize the present adjudication, and the terms of which articles must be considered decisive clauses in the matter."

A fee simple title certainly includes more than the surface, and cannot be reduced by any limitations or qualifications whatever. The Bermudez asphalt lake lies entirely upon the surface.

Third. It is assumed that the Company "owns" an asphalt mine, but there is nothing in this document to definitely fix its location, nor are its boundaries described in any definitely intelligible manner. Assuming, however, that the asphalt mine referred to is the one commonly known as the Bermudez Lake, it now appears that the only titles under which the Company could "own" it are, first, the Hamilton Concession, and, second, the

mining title above quoted. As the Hamilton concession was legally cancelled under a final judgment of the highest Venezuelan Court, if the mining title is void, it is difficult to see what value attaches to the so-called "wild lands" title.

The mining title granted to Carner and wife is of the same nature as that of "Felicidad" and other analogous titles. The fact that the New York and Bermudez Company is the present holder of this grant does not in any way alter the situation created by the Hamilton concession, which had all the force of a law of the Republic, by virtue of which the National Government for a term of twenty-five years could not grant concessions for the development of asphalt and other natural products existing in the State of Bermudez.

It will be noted that the mining title was a grant to Carner personally, although he is described as the Secretary of the New York and Bermudez Company. That it was a grant to Carner in his personal capacity is further evidenced by the fact that a deed was executed by Carner and his wife conveying the title to the Company, in 1893.

In order to determine the legal value of a given title, it becomes necessary to go back to its origin, since that which is void from the beginning will always be void. If the Government was incapacitated to grant concessions or mining rights to Carner or to any other party, then the concession made to Carner is null and void, and, consequently, that which the New York and Bermudez Company acquired from Carner and his wife is a valueless concession, which has never been nor can ever be validated simply because of the fact that the New York and Bermudez Company had acquired it.

The New York and Bermudez Company, holding the Carner deed, is a third party, such as were the holders of "La Felicidad," having no participation in or connection with the Hamilton contract. The Hamilton contract, moreover, does not nor cannot grant further rights than those stipulated in the document itself in which there does not appear any provision by virtue of which the New York and Bermudez Company, by the mere fact of having bought certain concessions wrongfully granted to a third party, may validate such concessions; nor is there any provision by virtue of which the New York and Bermudez Company becomes the only party that may obtain mining concessions in the State of Bermudez granted adversely to the provisions of the Hamilton contract. The New York and Bermudez Company, by reason of the Hamilton contract alone, had the right to work the asphalt and other natural products of the State of Bermudez, which is a very different thing from being the only judicial person who might acquire mining grants in the same territory. The exclusion stipulated in the Hamilton contract embraced the New York and Bermudez Company as well as all other persons.

In the litigation between Warner-Quinlan and the New York and Bermudez Company respecting the Felicidad title, the Company pleaded its rights under the Hamilton Concession, and the decision of the High Federal Court sustained its contention. During its exploitation of the Bermudez asphalt deposit, the Company always paid export duty on asphalt at the rate fixed in the Hamilton Concession, and not at the rate fixed in the Mining Code. That the Company was quite satisfied with the Hamilton Concession as the basis of its rights in Venezuela and that it was content with the decision of the High Federal Court which wiped out all other titles, is evidenced by the telegram of its Managing Director to President Castro, previously quoted in these pages. The attorneys for the New York and Bermudez Company in the United States, Nicoll, Anable & Lindsay, in writing to the Secretary of State under date of July 29, 1904, said:

"As we had the honor to point out in our letter of the 13th instant, the final decision rendered by the High Federal Court in the Warner-Quinlan suit, as late as the 28th of January last, a copy of which decision was filed with the Department on the 29th of February, **expressly and clearly confirmed the subsisting validity of the Hamilton concession and the Company's full and absolute rights thereunder.**"

Moreover, in the trial of the same case, the Company contended "that all the titles which the National Government has granted for asphalt mines in that region of the Republic are void, having been issued in contravention of the Hamilton Contract, of which the Company is the assignee. * * *"

Claim V. United States and Venezuela Company.

On June 18, 1900, the Venezuelan Government granted to Pedro Guzman a title to an asphalt mine named "Inciarte," located in the District of Maracaibo. Guzman transferred this title to George W. Crichfield February 5, 1901. On April 20, 1901, Crichfield and the Minister of Public Works signed a contract for building a steam railway for the working of the mine. On December 19, 1901, Crichfield transferred both title and contract to the United States and Venezuela Company.

The Constitution and laws of Venezuela require that all contracts of this character made by the Executive must be approved by Congress. **The contract was presented to Congress, but failed to get the approval of the Senate and is, therefore, considered by the Venezuelan Government to be absolutely null and void.** It appears that the United States claims that the resolution of Congress approving all the executive acts of the President during the Provisional Presidency, was sufficient to ratify the Crichfield contract in accordance with the Venezuelan Constitu-

tion and Laws, but **the Crichfield contract came before Congress, and failed to pass the Senate, therefore the contention that it was ratified by an omnibus resolution falls.** Nevertheless, the United States and Venezuela Company went ahead, built its railroad and began operations. On the 23rd of January, 1901, a new mining code was adopted by Venezuela, which provided for an increase in taxes, and an Executive decree of January 21, 1904, increased the export duty on asphalt. The United States and Venezuela Company refused to pay the increased taxes and export duty, claiming the Crichfield contract to be in force. An attempt was again made to have the Crichfield contract validated. The Venezuelan Government was prevented from doing this because the contract mixed the operations of the Public Works and the Treasury Departments, contrary to the Venezuelan Law, and it was for this reason that the contract had previously failed to pass the Senate. Negotiations were entered into between representatives of the Company and the Government, and **a basis substantially satisfactory to both the Company and the Government was agreed upon.** The Government offered the Company a new contract in legal form, which confirmed to the Company all the rights and privileges contained in the Crichfield contract. **The only difference was as to form and method,** and at the last moment the Company insisted that the original illegal contract must be validated. No adequate reason was assigned by the Company for its action, and it can only be supposed that the Company, finding its investment in Venezuela unprofitable because of the great cost of obtaining the asphalt, wishes to recoup its investment through an international claim.

At a meeting of the Venezuelan Cabinet, held on February 10, 1905, the Government, having under consideration all the points relating to the United States and Venezuela Company, confirmed its previous decisions, but decided not to discuss the legal rights of the Company, allowing the Company to demand from the Courts the declaration of rights which it alleged belong to it. It was decided that the Company might go on with its asphalt exploitations and exportations in the same way as it had been doing up to that time, and until the legal rights were decided.

Conclusion.

After reviewing and studying the merits of the foregoing cases, one is struck with amazement at the attitude taken by the Department of State and the tone of the diplomatic notes transmitted to the Venezuelan Government.

The only plausible explanation is that the attorneys representing the claimants have been seeking to commit the Government to a course of action from which it will be impossible to recede. It is surely inconceivable that President Roosevelt's

doctrine of the "Square Deal," or Secretary Root's pride in honest American diplomacy would permit them knowingly to do injustice to any other nation, great or small.

It is, furthermore, inconceivable that these astute statesmen would deliberately put themselves in the position of virtually saying to President Castro:

"We are aware that American adventurers have not fulfilled their agreements with your Government, nor complied with the laws of your Country; we are aware that we do not intend to abide by any arbitral awards that are not favorable to us; we are aware that Jaurett is not legitimately entitled to the protection of the Government of the United States; and we are further aware that the asphalt malefactors attempted to overthrow your Government, plunged your Country into civil war, caused the loss of millions of dollars and sacrificed the lives of thousands of your countrymen upon the altar of their greed. We do not care if all these things are true. We are stronger than you and, therefore, you must submit to our demands. We know you are right, but righteousness does not count when there is sufficient personal influence brought to bear upon this administration. Might rules, and we say to you, restore all these concessions without questioning our right to ask it. If you object, you are defiant; and we shall deal with you accordingly. We are asking arbitration, but that is only a 'bluff.' We have demonstrated that if the arbitrations do not go our way we will overrule the decisions of the arbitrators until we get decisions that please us."

Other South American republics are watching our controversy with Venezuela with the deepest interest and concern, because from its results they will be able to estimate the degree of confidence that may be given to the declarations of Secretary Root at the Third Conference of American Republics at Rio de Janeiro July 31, 1906, when he said:

"We (the United States) wish for no victories but those of peace; for no territory except our own; for no sovereignty except the sovereignty over ourselves. **We deem the independence and equal rights of the smallest and weakest member of the family of nations entitled to as much respect as those of the greatest empire, and we deem the observance of that respect the chief guaranty of the weak against the oppression of the strong.**"

No doubt some people have been prejudiced against President

Castro in consequence of the vigorous, persistent and long continued efforts to defame his character and destroy his reputation, through fake telegrams and faked news constantly foisted upon the public. Whatever Castro's peculiarities and faults may be, he is clearly entitled to several entries on the credit side of his account:

First. He fought his own revolution to success.

Second. He has fought all other revolutionists with success—not even the wealthy Matos, supported by the Asphalt Trust, could defeat him.

Third. Adopting the methods used by Diaz in Mexico, he has put an end to revolutions in Venezuela, assuring the peaceful conditions so long needed for the development of his Country.

Fourth. He entered into protocols for the settlement of claims against Venezuela, both with nations sending gunboats and with the so-called peace powers, although many, if not all, of these claims were based on acts and events that took place long before he became President.

Fifth. He has paid in full all of the claims of the blockading nations and has begun the settlement of the claims of the others.

Sixth. He has arranged a settlement of the outstanding bonded indebtedness of Venezuela, long in default, and is meeting all interest payments promptly.

Seventh. So far as the limited revenues of the Country permit, he has planned and commenced public improvements for the health and comfort of the people.

Eighth. He has stood up courageously for the rights of his Country and Government, even against the United States, insisting that the sovereignty of Venezuela and the integrity of its Courts should be fully respected by that powerful nation.

These facts must command the attention and, to a large extent, the admiration of President Roosevelt, who has no use for "mollycoddles." The conservatism and good judgment which have guided President Roosevelt in many affairs of greater moment will, no doubt, when the whole truth is known, continue to characterize his acts in the case of Venezuela vs. The Asphalt Trust.

DECISION IN THE REVOLUTION SUIT.

The decision of the Civil Court of First Instance, in the action brought against the New York and Bermudez Company for promoting and supporting the Matos Rebellion, came to hand after the foregoing matter had been put in type. The following careful translation of the decision in that suit completes the record of the legal proceedings in the Venezuelan Courts up to this date:

JUDICIAL POWER OF THE FEDERAL DISTRICT. CIVIL COURT OF FIRST INSTANCE OF THE WESTERN SECTION.

Decision of this Court in the action begun by the Attorney General of the Nation, in the name therof, against the New York & Bermudez Company on various counts.

JUDICIAL POWER OF THE FEDERAL DISTRICT.

United States of Venezuela. In the name thereof.

Civil Court of First Instance of the Western Section of the Federal District.

There were considered—

Oral and written arguments and proofs presented by the attorneys for both parties.

Before the Court proceeds to render its decision, it deems it proper, previous thereto, to consider matters of a moral nature set up in his briefs by the attorney for the defendant Company, tending to prove that the Judge who has taken cognizance of this matter should abstain from rendering any decision therein, for the reason that the said Judge was a member of the army of the vanquished, a rebel, and for said reasons in reality a party to this action, and that, consequently, he is included within the scope of Article 1128 of the Civil Code.

He (the attorney for the Company) states that "the Judge who is about to decide this matter cannot, in this case, no matter how silent his conscience or strong his mind, place himself in the position of a magistrate who should render judgment tranquilly and with easy conscience, in the name of the law and guaranteed rights," since "Judges are men, and if, as Judges, they have in their favor the presumption of impartiality, nevertheless, as men, they may find themselves possessed of the same passions which are the inheritance of all humanity, and, consequently, they are lacking the prestige which they should enjoy; and when this occurs there exists a cause for their abstaining from deciding in a given matter, and, in case they should not do so, a cause for challenging their jurisdiction."

The Court holds: that it is solely because of the respect which should be given to all the parties may allege in support of their rights or in defence thereof, and, in the present case, owing to a duty of a moral nature which compels it to clear up whatever questions are presented in the debate, that it undertakes to discuss the arguments of the attorney for the defendant Company, since these arguments, set forth as moral reasons, are without the realm of written law—the only law which can actuate a Judge—and result, consequently, in this concrete case, as lacking all pertinent legal application.

The Judge of the Civil Court of First Instance of the Western Section of the Federal District is a duly constituted legal Judge. If there is given to the parties the right to allege everything they may think proper in

support of their rights and interests, as they are free in the choice of rules and principles for the interpretation of laws, the Judge does not occupy this same position, because he is bound definitely, by the very reason of his office, to search for, clear up and determine the truth, the truth alone,—that is, the real truth and the truth established by law. For such object the law provides (Article 28 of the Code of Civil Procedure) that the Judges must confine themselves solely to what is alleged and proved in the record, and cannot seek of themselves conviction outside of these. Outside of the law and the facts in litigation, Judges cannot voluntarily supply exceptions or arguments. Nor can the Judges even make compromises between the law and their consciences, because the law is certain and established while the conscience may fluctuate. The law, in the course of its evolution, giving heed to the necessities of men as beings who have rights and obligations, has consigned in the Codes, under express sanction, the result of its experience and reasoning, submitting thus to fixed provisions of law and procedure the manner of establishing and regulating said rights and obligations; and in vain, to-day, could one seek outside of the stronghold of the law for grounds on which to render decisions. Between law and conscience, society, which is, after all, the reason of the law, has preferred to submit its questions in all their aspects to the decisions of written law, which is the result of experience and the belief as to what is most useful.

If the attorney for the defendant Company thought this Judge was included in the Fourth Sub-Division of Article 117 of the Code of Civil Procedure, he had the remedy at law granted by the said Article 117, cited.

The right of challenge is granted by law to the parties for the cases in which a Judge is found to be included in one of the twenty-one cases specifically provided for by said Article 117, above cited, and the Judge does not voluntarily refuse to preside. It is the remedy which the written law places in the hands of litigants against Judges, when these latter may be presumed to be partial to one of the parties, and all the more so is it the proper remedy, because the reasons which the attorney for the defendant Company invokes to-day could not have been unknown to him at the moment when he should have acted, and which is provided for by Article 122 of the Code of Civil Procedure, and for the still greater reason that it is asserted that said reason why this Judge should not act is a matter of public order, owing to the fact that it cannot be waived by the parties. Only thus, after such a proceeding had been decided, could the challenge be made good in law.

Such a proceeding not having been had, the Judge who has taken cognizance of the matter cannot today abstain from deciding it—because there is no law so ordering or permitting him to do so; because parties who resort to the Judges, according to provisions of Articles 1 and 2 of the Code of Civil Procedure, have a right that said Judges, administering justice, shall render their decisions in due course and with the least delay possible, in accordance with Article 26 of the same Code, without exposing them to loss of time and a delay of the litigation, which might cause them severe damage; because the Judges cannot refrain from deciding under the pretext that the law is doubtful or defective; because the undersigned does not believe himself to be included in sub-division 4 of the said Article 117 cited; because the Judge cannot, without doing grave injury to one of the parties, attend or listen to arguments of a moral nature, when legal arguments with reference to the same matter were passed over in their due time, and because, as a magistrate who has taken jurisdiction over this matter up to and including the presentation of briefs, he cannot refrain from deciding the case without doing injury to justice and without reflection upon the integrity of the magistracy.

The Court does not consider, as applicable to the case in point, Article 45 of the National Constitution, cited by the attorney for the defendant Com-

pany for the purpose mentioned in his briefs, since the offices of Senator and Deputy are "excusable" (that is, one may absent himself or excuse himself from the discharge of said duties); they do not give representative character to an individual, except when he has enjoyed the immunity provided for by Article 46 of the National Constitution and has been present at the sessions of the Senate or House of Deputies; The National Constitution, in Articles 31 and 35 thereof, provides for vacancies and the method of filling the same; the incompatibility provided by law is that of the exercise of any other public office, when one is actually exercising and discharging the duties of Senator or Deputy; this position has been proved by long practice in Venezuela, and this is the interpretation most consonant with principles of law, the liberty of the individual and the very text of the law itself.

These points having been considered as preambles, and discussed in so far as they are important, the Court proceeds to render its decision.

On the 22nd day of September, 1904, the Attorney-General of the Nation, in the name thereof, began suit before this Court against the New York & Bermudez Company, a corporation domiciled in Philadelphia, United States of America, and also in this city, in the person of its representative, Mr. Robert Kemp Wright; an action, the complaint in which reads as follows:

"Since the early part of the Year 1901, the period at which began to take shape the rebellious plans embraced and approved by many individuals against the legally constituted Government, and which realized months later, produced the movement known by the name of the "Revolución Libertadora," there were already suspected by the National authorities the relations, tending to the support of said plans, maintained by the corporation, styled the New York & Bermudez Company, with the principal and most active revolutionary agents. The action of the Government to repress and punish the guilty procedure of said Company was then embarrassed by the fact that it, the Company, was carrying on before the highest Court of Venezuela a notorious action in which it went so far as to maliciously assert that official sympathy was working in favor of its opponents. An energetic and repressive method of procedure would without doubt have given support to the truth of this unfounded statement, and it was not desired that in any way, or that for any reason, the impartiality of the Judges intrusted with the decision of said action should be in anywise suspected. Besides, at that moment, the Attorney of the Executive did not have in his possession the accumulated proofs which he now has, and which show the active and real participation which, in said unjustifiable revolution, was had by said Company and which cost the Country so many lives and sacrifices of every kind.

"The alliance between the New York & Bermudez Company and the Chief of the Libertadora Revolution having been sealed by the trip of the latter to New York, in the month of June, 1901, the Company proceeded to furnish him with the funds necessary to begin the campaign; and for said purpose, after General Matos had returned to Europe, Mr. Francis V. Greene, then President of the National Asphalt Company, the Manager and Director of the New Trinidad Lake Asphalt Company, and one of the Directors of the New York & Bermudez Company, who had under his charge the management of all the business of this last named Company in Venezuela, joined him, in the month of July, to arrange for the purchase of a steamer and other necessary elements of war. They first met in Paris, then Greene crossed to London, and later to Glasgow, where he arrived at the beginning of August, for the purpose of examining various steamers which were for sale. Having returned to Paris, he drew a draft through the Credit Lyonnaise, against the Seaboard National Bank of New York, of which bank Greene was a Director, and in which the Trust, of which the New York & Bermudez Company formed part, carried an account. Said draft, which amounted to the sum of One Hundred Thous-

and ($100,000.00) Dollars, was ordered to be paid by Mr. Sewall, the Secretary of the Trust, who ordered its controller to charge said sum to an account called "Government Relations," and which contained (*all details omitted*) all that was disbursed for Venezuela. Several days thereafter there was drawn, paid and entered, in the same form, another draft for Thirty Thousand ($30,000.00) Dollars. Some months later and as a result of the operations of Greene in Europe, there appeared on the coast of Venezuela, armed for war, with large supplies and conducting on board thereof the Chief of the Libertadora Revolution, the pitifully celebrated steamer "Ban Righ," the history of whose piratical depredations is known to all. The wonderful campaign in which the present President of the Country overthrew and dispersed all the armies opposed to him by the Revolution, did not succeed in convincing the Company, which I am opposing, of the failure of its aspirations, or succeed in causing it to desist from its purposes, because, after the celebrated day of La Victoria, it persisted in assisting Matos, prolonging, in this manner, an iniquitous war, in all aspects, unjustifiable, and which increased so much the burdens of the Nation and delivered it almost exhausted and undefended to foreign oppression. Complete proof of all the facts above set forth I shall produce, Señor Citizen Judge, in due legal course. In addition to shedding Venezuelan blood, the value of which is incalculable, in addition to the impairment of the credit and good name of the Country suffered as a consequence of the war, and of the great sums it cost the Government to suppress it, the Libertadora Revolution caused the National Treasury losses of exceptional importance, as it is obvious to suppose and as I shall prove during the course of the trial; losses for which the New York and Bermudez Company is responsible, which, through its Directors in the United States and its agents in Venezuela, supplied funds and material and moral support from the beginning until the end of the strife. From all of what has been stated, it is obvious that said Company has caused the Nation the grave damages hereinbefore set forth, for which it is obliged to make compensation, as is provided by all systems of legislation and which our National Legislation has provided for, as evidenced by the provisions of Article 1122 of the Civil Code now in force. Wherefore, I have received instructions from the Executive Department to sue, as I in fact do sue, in due form of law, the New York and Bermudez Company, a corporation domiciled in Philadelphia, United States of America, and likewise in this City, in the person of its representative, Mr. Robert Kemp Wright, of full age and a resident hereof, in order that it may be determined that it be obliged to pay, and, in fact, do pay the United States of Venezuela, for the serious losses it has caused it by its participation in the last Revolution, styled the "Libertadora Revolution;" a participation which was unjustifiable under every point of view, and particularly so, if one considers its duty of strict neutrality, which, as a foreign corporation, it should have observed in matters relating to the internal politics of the Country. Solely for jurisdictional purposes, I estimate the sum sued for by the present action at more than Four Thousand (4,000) Bolivares, but I demand that the total amount of damages sued for be determined by experts, in accordance with the data I shall supply in due course. Wherefore, I solicit of you that you be pleased to allow the present complaint, with the documents annexed thereto, to decide the same in accordance with law, and finally declare the same to be in order, together with costs, disbursements and other relief at law.

"I likewise petition that a translation to the legal language of the Nation be made of the documents I submit in English.

"It is justice, etc."

The complaint having been admitted to be filed and the representative of the defendant Company cited in due legal form, the parties appeared on the hearing on the 5th day of October, 1904, and the Managing Director of the defendant Company interposed the exception of the inadmissi-

bility of the complaint to filing; an exception which was objected to and contested by the Attorney-General of the Nation at the hearing of the 7th of the same month. It was decided that the point should be determined as a question of law, and by the decision of the 9th of December, of the same year, this Court, sitting with its associates, held said exception to be invalid. This decision was appealed from by the defendant, and the Superior Court confirmed it on the 14th of March, 1905. A day and hour to answer the complaint having been fixed anew, the attorney of the New York & Bermudez Company interposed the dilatory exceptions of lack of jurisdiction of the Court and defects in the form of the complaint, at the hearing of the 16th of May, of the year last cited, which exceptions were declared invalid by the decision of this Court, dated the 9th of June, 1905.

On the 12th of the said month of June, the attorney for the defendant Company presented his written answer, which reads, as follows:

"We deny and oppose absolutely the complaint in all its parts, both with reference to the acts imputed to the Company, relying on the inexact and insufficient statements of the complaint, and likewise with reference to the conclusions of law, which it is sought to deduce therefrom. Under the hypothesis that said acts might result as duly proven, which we deny most categorically, and under the supposition, denied as impossible, that the damages and losses (undetermined), satisfaction for which is exacted, can be proved in accordance with law, nevertheless, the Company is not responsible for what is claimed nor for any other act whatsoever."

The Court, having sought to effect an amicable settlement between the parties, failed to obtain the same. An extraordinary period within which to submit proofs having been requested by both parties, the Court decided that the petition was duly made, and reserved the setting of time for the hearing of proofs.

The action having arrived at the stage for the submission of proofs, the Attorney-General of the Nation submitted his on the 24th day of June, 1905, in three instruments which are, as follows:

In Venezuela: Ratification of the deposition of Mr. Ramon B. Luigi, made before this Court; ratification of the deposition of Dr. Geronimo Vincentelli before the Parish Court of the Western Part of this City; ratification of the two depositions of Mr. Luis Marcano Betancourt before the Civil Court of First Instance of the Fourth Federal Circuit of the State of Bermudez, dated respectively the 4th and 6th of October, 1904, and made upon petition of Dr. L. Romero Sanchez, special attorney of the Attorney-General of the Nation; ratification of the depositions made in Guariquen, before the Judge of the Municipality of Union, District of Benitez, State of Bermudez, by Justo Marcano, Norberto Aguardo, Juan Manuel Cabrera and Jose Inez Figuera, proof sought upon petition of the said representative of the Attorney-General of the Nation; ratification of the depositions made, upon petition of the same representative, by Victorio Marin, José Maria Moreno and Carlos Faustina Ortega, before the Judge of the District of Benitez; ratification of the depositions made in Carupano by Jesus Maria and Juan Bautista Diaz, upon petition of the said representative of the Attorney-General; depositions of Ramon Mina, Dr. Juan Vincente Camacho, Jose Manuel Valdez, and Antonio A. Michelena; ratification as to the contents thereto and signature thereto of a document signed by Messrs. A. H. Carner, Francisco Soto M., Dr. Alfred Schaffernoth, A. H. Trujillo, Son, Silvestre Jule and Samuel Hughes; identification as to the contents thereof and signatures thereto of four letters written by Dr. Manuel Antonio Ponce, and likewise the latter's deposition; petition requesting that the Citizen Secretary of the Treasury be memoralized to remit and certify copies of documents proving the disbursements made by the National Treasury in order to suppress the revolution styled "Libertadora," from the beginning to the termination thereof, and the general statements of the Treasury's income from the various sources of public revenue, corresponding to the years 1900 to

1904; and he petitioned that there should be asked of the Secretary of the Treasury the reports corresponding to the years 1900 to 1905. As to foreign proofs: Ratification of the deposition made by Mr. Amzi Lorenzo Barber, of Washington, before the Notary Public, David Fischer, in New York, and which is in due legalized form; ratification of the deposition made by Mr. Orray E. Thurber, of New York, before the said Notary, in the same City, which is found annexed; ratification of the deposition made by Mr. Charles Y. Baldwin, of New York, before the Notary Public, Joseph F. McLaughlin, which is in due legalized form; ratification of the deposition made by Mr. William Young Kinleyside, of Edinburgh, Scotland, before the Notary Public, Alexander Ridgway, in London, which is likewise among the duly legalized exhibits; ratification of the deposition made by Mr. Michael M. Schweizer, a resident of Manhattan, New York, before the Notary Public, John F. Cunneen, in New York; ratification of the deposition of Lorenz A. Kuhn, a resident of Brooklyn, before the Notary Public, Fletcher C. Scofield; deposition of General Francis V. Greene, a resident of Buffalo, with reference to the matters concerning himself; deposition of Mr. Thomas H. Thomas, of New York; deposition of Mr. E. D. Jeffs, a resident of Detroit, Michigan; admission, as to contents thereof and signature thereto, of two letters signed by Carlos Dominguez Olavarría, domiciled in Port of Spain, Trinidad, and his deposition; the originals of four manifests of cargoes shipped at Port of Spain, Trinidad, to Venezuela, in the Steamer "Viking," signed by the Consul of the United States of North America, and sealed with the seal of the Consulate, were submitted. The crew roll of said Steamer "Viking" was likewise produced, together with six additional documents sealed and signed by the said Consul of the United States of North America in Trinidad, Mr. Alvin Smith, and it was petitioned that they be remitted under letters rogatory, in order that said Consul might acknowledge the execution of the same, as to contents and signature; and a letter, signed by E. D. Jeffs, late Superintendent of the New York & Bermudez Company, was produced, in order that it might be identified and acknowledged by the latter, as to contents and signatures.

On behalf of the defendant Company the following proofs were submitted: Deposition of Messrs. Frederick R. Bartlett, a resident of Philadelphia; Oswin E. Mosley, domiciled in London; Joseph Perry, a resident of Philadelphia; Neal R. Smith, a resident of Port of Spain, Trinidad; Phillip Scott and Alfred Webb, domiciled in Trinidad; James Dalton, of New York; Carlos Dominguez Olavarría, Trinidad; on its behalf the depositions made before a Notary Public and legalized by the Venezuelan Consul in Trinidad, of Messrs. James Hartman, Richard Ryner, Gordon Alexander Young, Frederick Adolphus, Charles Arno, Francisco Gomez and James Miles, were presented in original form, and their ratification was demanded; a certificate of Messrs. D. Moralejo & Company and Stephens & Scott, Limited, dated in Trinidad, and duly legalized by the Venezuelan Consul at said Island, was presented, and it was petitioned that Messrs. D. Moralejo and Robert Morrison should ratify the contents of the same; deposition of Mr. McCarthy, a resident of Trinidad, and deposition of Vicente Perez Leon, a resident of New York; deposition of Stuart G. Nelson, New York; deposition of Gilbert M. Furman, Plainfield, New Jersey; deposition of Frederick J. Buxton, of Wayne, Pa.; deposition of George W. Elkins, Philadelphia; deposition of Marcus A. Reilly, South Amboy, N. J.; depositions of Arthur W. Sewall, Avery D. Andrews and John M. Mack, residents of Philadelphia; deposition of Ira Atkinson, domiciled in Germantown, Pa.; deposition of Mr. James Lewis Rake, domiciled in Reading, Pa.; deposition of Henry Willard Bean, New York; deposition of Frederick A. Holmes, Philadelphia; deposition of Frank D. Stephens, domiciled in Holmesburg, Pa.; deposition of E. M. Cravath, a resident of the Dominion of Canada, Province of Nova Scotia; deposition of Francis M. Cartland, New York; deposition of Mr. Francis V. Greene, of Buffalo; deposition of Mr. Michael M. Schweizer, of New York; a copy of an official note, dated the 19th day of June, 1905, addressed by the Citizen Secretary of the Treasury to the Venezuelan

Consul in Trinidad, was produced, and it was petitioned that the said Citizen Secretary of the Treasury be memoralized to remit a certified copy of said note; a document signed in Trinidad by the Venezuelan Consul in said Island was produced; various Consular papers and receipts executed by the same Consul himself were presented; and various documents executed by the Custom House authorities appointed by the Revolutionists in Cano Colorado and Guanoco were produced.

The attorney for the defendant Company, by an instrument dated the 23rd of June, 1905, objected to the admission of the Nation's proofs and challenged the greater part of the witnesses, basing his challenge upon the fact that they had both a direct and indirect interest in this litigation.

The Court admitted all the proofs by an order dated the 4th of July, of said year, and granted the extraordinary period of time which had been requested, upon the filing of the answer, for the submission of proofs.

In due course of time and with the assistance of the various representatives which the parties deemed it wise to appoint, the proofs above mentioned were secured, with the exception, on the part of the Nation, of the ratifications of the testimony of the witnesses A. H. Carner and William Young Kinleyside, who did not testify, and Jose Inez Figuera, which was waived; and, on behalf of the defendant Company, of the witnesses Oswin E. Mosley, James Dalton, James Hartman, Gordon Alexander Young, D. Moralejo, Stuart G. Nelson, George W. Elkins, Arthur W. Sewall, John M. Mack, Ira Atkinson, Henry Willard Bean, Francis V. Greene and Michael M. Schweizer, some of whom could not be found, while the testimony of the others was waived by the defendant.

The cause of action having been set forth, and a statement given of the papers submitted, and the Court having heard the arguments of the attorneys for the parties to the action, this Court, for the purpose of rendering its decision in this action, wishes to set forth the following considerations of law:

The exception of the inadmissibility of the complaint gave rise to a very noteworthy legal debate, as set forth in the briefs. Said exception was interposed by the attorney for the defendant Company, who founded the same on the fact that the right of action sought to be enforced against the Company is derived directly from a political crime, and that, in accordance with the law in force at the time at which this said crime was committed, it, the crime, was of a special and particular nature; that in the commission of a political crime, the party offended, that is, the party injured, is the State, which acts principally as a political entity when there is in question the reestablishment and maintenance of the social and political organization of the Nation, and that in Venezuela, the State, through its laws, has expressly discontinued all proceedings against the authors of, and others responsible for a crime of that nature, since, in accordance with the terms of Article 123 of the Penal Code in force at that time, in cases of crime against National Authorities, all proceedings cease, when public order is restored, and as that law was the only law applicable to the case, it was on that, he argued, that the complaint prepared by the Attorney-General of the Nation against the Company should not be admitted, as this is one of the proceedings or rights of action which have been quashed by operation of law.

The Civil Court of First Instance, sitting as an associate body, declared this exception to be unfounded, basing its finding on the fact that the express provision of Article 123 of the Penal Code refers solely to the cases provided for in Articles 120 and 122 of the same Code, and that in none of those cases can the particular act complained of in this action and which is charged to the Company be embraced, and that for the very reason that this act is not comprised in the cases mentioned in Articles 120 and 122 of the Penal Code, the provisions of Article 123 cited cannot be applied to the case at bar. This decision of the Court of First Instance was confirmed by the Superior Court. The dilatory exceptions of lack of jurisdiction of the Court and defective form of the complaint having likewise been declared to have no foundation in law, the complaint was answered in the terms hereinabove set forth. As both

the facts, as well as the law which it is sought to deduce from said facts, are contradicted by it, before passing to the study of the proof of the acts charged, the Court proceeds to clear up the questions of law.

The plaintiff charges the New York & Bermudez Company Corporation with the act of **having supplied to General Matos the funds necessary to begin the Libertadora Revolution, and of having given to said Revolution moral and material support up to the end of the strife, through its Directors in the United States and its agents in Venezuela,** and plaintiff alleges that for this reason the defendant Company caused the Nation great damage, owing to the loss of lives and sacrifices of all kinds which said revolution caused the Country, the impairment of the credit and good name of the Country as a consequence of the war and the enormous sums which it cost the Government to suppress it, estimating as exceptional in amount the injury caused the National Treasury in consequence of the Libertadora Revolution; all of which injuries the Company is bound to make compensation for, as is established by the systems of legislations of civilized countries, and as is provided for in the system of our Nation, in Article 1122 of the Civil Code now in force. This Court finds that the action begun is in accordance with law. The exception of inadmissibility of the complaint having been overruled for the reasons stated, provided the acts charged, and which it is claimed caused the damages and losses, are proved, the provision of our Codes, on which the plaintiff should base its action, could be no other than the provisions of Article 1122 of the Civil Code. That is, unless the right itself is denied, and the precedent established that the injuries caused by the defendant Company (in case these injuries should be proven) must remain uncompensated for, owing to the fact that we are treating of a juridic person which is incapable of committing penal or politic acts, and which, consequently, cannot fall under the authority of law which can compel restitution for injury done. But the law cannot permit guaranteed rights to remain without protection; the law cannot permit said injuries and damages to escape uncompensated for, owing to the fact that the person who might inflict said injuries was not susceptible of being prevented from doing so. The law could not place in such a pitiful condition one who should suffer an injury, whatsoever its origin, because of the fact that this injury was inflicted by a moral entity. Between one who has suffered an injury and one who has caused it, independently of the preventative means which its system of procedure has adopted for the detection and classification of crimes, civil obligations are established by law, no matter how innocent may have been the participation of him who has caused the injury. And for this reason, even in a case where there has been no intent to commit wrong, how is it possible to exempt a Company from the civil responsibilities following the commission of an act, provided its participation in the injury is proved and that damage resulted, owing to the simple fact that the Company is a juridic entity? To this claim is opposed the systems of law of all civilized countries, among them that of France, which establishes solely the doctrine that every juridic person is civilly responsible for the acts of its agents in the exercise of his functions, a doctrine with which our laws upon this matter agree in every respect. And said moral entities are properly deemed to be real entities, capable of inflicting injuries with malicious intent, and, consequently, of falling under the provisions of Article 1122 of the Civil Code, or of being placed within the scope of the doctrine established by Paragraph 4, of Article 1122, of the same Code; in both of which cases, the right of action is only to enforce their civil responsibility, and does not affect their physical personality directly, and is limited to pecuniary compensation for the damage inflicted. The party injured by the Directors, agents, employees or clerks of a Company, proceeds against the Company itself to claim indemnity for the injuries caused him, because the law considers that corporations, of themselves, would be mere words without meaning, if the will and intelligence of man did not intervene in their operation, in order to direct and manage the same, and that corporations are obliged in all their acts to respect the rights of others, either by not causing them damage, or by preventing damage which

might arise through negligence, lack of care or attention on the part of those in their employ. Some foreign legal authorities, among them the Germans, have held that a moral person is a real person. They hold that juridic persons are not a creation of law, but that they pre-exist their legal birth, and that the law only enfranchises them. As the needs of men increase the necessity for combinations increases, in order to render greater mutual support and supply these needs with greater protective force. The need for associations appears to be clear and marked, and the combinations arise, not as bodies produced by chance, but rather, as necessary entities, created by necessity and for the advancement of man, under his control, will and intelligence. It is not the law that creates these associations; they pre-exist; they are formed by the necessities of existence and preserved by the exercise of mutual rights which regulate their relations with men. These personalities thus form a new body; a new personality. As one author says: "The individuality of human elements which comprise a group is blotted out, is effaced, more or less completely, in order that a new juridic being may appear, gifted with a life of its own, and likewise with a will and intelligence of its own, formed by the act of individual wills which have united to form it." (Capitan).

Under such a theory it is, therefore, clear that the moral person finds himself, in law, in the same position as a physical person, and in such case there may be applied to it the provisions of Article 1122 of the Civil Code. This is likewise the opinion of an illustrious Italian authority, Chironi, Professor of Civil Law in the University of Turin, who, in writing in regard to the possibility of imputing civil crimes and quasi crimes to juridic persons, states that "the juridic person represented must answer not only for the quasi crime, but likewise for a crime which can be imputed to its representative. The representative, when he acts as such, is the instrument of the party represented; it is sufficient that the act be imputed to the representative, in order that the represented may be made to answer for that act. The limit, which is derived from lack of authority, canot be set up against the party injured who demands indemnization of the party represented, and this is so by virtue of the basis of the obligation, which is born of the civil crime or quasi crime, of which it cannot be said, as of a contractual injury, that a third person must consider it his own fault if he is ignorant of the capacity in which the person with whom he deals may be acting; with reference to third persons, the act of the agent is considered as if it were the direct act of the principal, who, of his own free will, *motu proprio,* commanded him to perform the act. In that commission, or trust, is comprised the right of representation, which is always the direct reason of the responsibility of the principal." (La Colpa nel Diritto Civille Odierno.)

This Court firmly believes and holds that moral persons, from the State, which is the highest moral entity, to the most modest mercantile corporation, are responsible, civilly, for all their unlawful acts; since, if, as set up in the briefs, it is true that said mercantile corporations, and, in general, all kinds of moral persons, cannot personally commit such acts, as they lack a flesh and blood personal character, yet they do commit them by order of their directors, agents or clerks, who thus form the head and hands with which it, the corporation, acts. It is a matter of no importance whether the responsibility be direct or indirect, or whether it arise out of this or that crime; the fact is, that a civil action compels them to repair the damage and injury they have inflicted. Venezuelan Law, in this case, has not abandoned the injured party, but rather establishes in his or her behalf the juridic entity of the crime or quasi crime, and grants to him, who has suffered an injury, the right of demanding indemnity from him through whose fault the injury has resulted. (Articles 1122 and 1123 of the Civil Code.)

From this obligation of giving indemnity for injuries caused, juridic persons cannot exempt themselves by the sole fact of being such, because this would be equivalent to holding the juridic absurdity that the injury which one of such persons might inflict, and which, in a natural person, would constitute a crime subject to penal and civil responsibilities, should not be compensated

for by such juridic persons, owing to the fact that an action began against them would of necessity be founded upon a crime for which they could not be made subject to suit. Such a disproportionately advantageous situation for this kind of persons the law cannot establish, because it would give rise to the absurdity that, in certain cases, nothing better could be improvised than to seek protection under the name of a corporation, in order to commit unlawful acts, without fear of legal responsibility. With reference to this our Commentator, Sanojo, writes as follows: "Among the owners of establishments upon whom the law imposes responsibility for injuries occasioned in the exercise of their functions, must, necessarily, be included the Nation, the States and other juridic persons. And this responsibility rests upon the owners and directors of establishments, even though their servants and clerks may have acted *motu proprio* (of their own initiative), without orders or instructions from their chiefs and superiors; and it rests upon them not only with reference to third parties, but also with reference to servants and employees on whom their fellow servants may have inflicted an injury."

The Court will not enter, therefore, into the question of whether or not the action begun arises out of political or common crimes. The Court will study the question as to whether the acts imputed to the defendant Company have been duly proven; whether these acts, in the light of civil law, are productive of obligations, as acts which have caused injury to another, and whether, consequently, they are comprised within the limits of Articles 1122 and 1123 of the Civil Code; whether the Company has committed an illicit and voluntary act, by which it caused injury to the Venezuelan Nation, and whether it is, consequently, responsible civilly for the obligations arising from said acts, in accordance with the tenor of Articles 1122 and 1123, above cited.

The Court thus holds, as established, that the action begun is in accordance with law, and passes to the analysis and study of another of the arguments, upon which the attorney for the New York & Bermudez Company insisted with much force. It is the argument he deduces from the instrument executed between the Nation and General Manuel A. Matos, and which put an end to the action followed by the former against the latter, for indemnization of losses caused by the revolution styled "Libertadora." The instrument has been produced by the party pleading it, by means of a certified copy thereof, which remains of record.

It is evident that the bare statement of the question, as put forward by the defendant, would necessarily imply the termination of this litigation, by operation of law. It cannot be denied that between Matos and the defendant Company there exists the joint responsibility, established by Article 1128 of the Civil Code, and especially, if there is taken into consideration the direct responsibility demanded of both and the similarity of its origin. If, consequently, there has been a remission in favor of one of the joint co-debtors, this must, in strict law, benefit likewise the remaining debtor. To decide this point raised, with any probability of accuracy, the Judge must analyze the document from the text of which the remission claimed is thought to be derived. It must immediately and by force, as a premise, be recognized that the Nation did not therein reserve any right against the joint co-debtors, and, on the other hand, it is manifest, likewise, that in the text of said document the term "remit" has not been employed; but the Judge is not permitted in his interpretation to attend only to the intention which the parties may have had at the moment of executing the instrument, but must attend likewise to what they really and truly express; the question is, therefore, reduced to the investigation, in the light of legal texts and admitted principles of law, as to whether or not the act referred to is clothed with the character of an acquittance or remission of a debt.

Remission, according to the authorities, is an act by which the owner of a credit renounces the right of action to collect same. It is, therefore, a unilateral act performed by the sole will of the creditor, without the presence of the debtor being absolutely necessary, and one by which said debtor would be free of the debt although ignorant of the execution of the remission. In this

sense it might well be alleged in the case at bar, that, as the document is signed by both parties, it contains a bi-lateral contract, which does not constitute a remission, but that would not be sufficient to destroy the presumption *juris et de jure,* sanctioned by Article 1254 of the Civil Code.

In general terms, remission is a renunciation, and it is most manifest that in the document under examination there is set forth a mutual renunciation of rights of action and of rights; besides, in the opinion of the Court, that circumstance is not sufficient to establish the nature of the act to which it certifies; because that mutual renunciation is likewise essential to a contract of compromise or adjustment; and as the very lawyer for the defence has, with insistence, characterized that act as one of compromise, in an endeavor to confound it with the act of remission, in order to take advantage of the civil effects of the latter, it is proper, in this place, to set forth the typical characteristics of both acts.

"Compromise or adjustment" (as defined by Article 1678 of the Civil Code) "is a contract in which the parties, each giving, promising or retaining something, terminate and discontinue a litigation or prevent a future one."

From the mere comparison of this definition with that which has been given of "remission" there arises the first point of dissimilarity between the two things defined; remission is a unilateral act which obligates only the creditor who performs it, while compromise, or adjustment, is a bi-lateral agreement which demands the presence of the wills of two or more persons. Going deeper into this examination, the following characteristics would be found to be peculiar to each act: *First:* The right which is compromised must be doubtful. "It is necessary," says Laurent, "that the right be debatable or susceptible of debate; it is precisely for the reason that the right is in doubt, that parties compromise the matter. On the other hand, doubtful credits are not susceptible of remission, except from the time they shall have been allowed, and this is so, because of their very uncertain condition" (F. Laurent Cours Elementaire de Droit Civil, Volume 15, Page 153). *Second:* A compromise implies a mutual sacrifice, and there can be no compromise if each one of the parties does not give or promise something, and, consequently, it is essentially a burdensome contract.

Remission cannot take place except gratuitously; it is an act such as that of gift, that is to say, of pure liberality.

It is not unknown to the Court that, in the opinion of some authors, remission may be made against one's will; but, as Pacifico Mazzoni says, in opposing this opinion, it is not sound:—"If the debtor," says this author, "gives the equivalent to a creditor to obtain his freedom from the debt, there will exist either a simple payment or a payment preceded by a novation; in the contrary case, payment will have been made for the part which the debtor delivers, and there will exist a remission of the balance, and if it should have been compromised, there will exist a compromise and not a remission of the debt." (Pacifico Mazzoni, Instituzione de Diritto Civile Italiano, Volume 4, Page 249, Note 1.)

One of the authors above cited, in writing upon the point in study, says: "What distinguishes a compromise from other juridic acts, whose object is likewise to terminate litigation, is that it implies a mutual sacrifice, in so much as the desisting from and the acceptance of a demand constitute the simple renunciation of what is demanded." (F. Laurent, in the work cited.)

The Court now proceeds to consider whether, in accordance with the theories cited, the instrument executed by the Nation and Manuel A. Matos should or should not be considered as a remission, and before doing so observes: that as the object sought by the attorneys for the defence is the liberation of their client upon a presumed renunciation of its creditor, the interpretation must, perforce, be restrictive, in accordance with admitted law on the question of renunciation.

From the instrument referred to, it is clearly and explicitly seen that both parties agree to terminate the action, upon the condition, which Matos accepts, of paying all the fees both of his attorney and of Dr. C. V. Soublette, the

Deputy Attorney-General of the Nation, and, likewise, the cost of certain improvements to the house occupied by the Concordia Club, belonging to Matos, this last an obligation of a nature entirely foreign to that of the action followed against the New York & Bermudez Company. In this express condition, accepted by Matos, who was a party to the instrument, and in the mutual renunciation which the parties promised, the Judge finds one of the distinctive elements of a compromise, namely, the mutual sacrifice of a right. It is impossible to doubt the litigious character of the credit compromised, and with reference to the burdensome character of the agreement, this is revealed by the equivalent exchanged between the parties, that is to say, rights of actions which they mutually renounce and which must possess some real value, in accordance with the tenor of Article 19 of the Code of Civil Procedure. And, furthermore, the intention of compromising is shown, not only from the wording and special clauses of the instrument, but for the reason that it is not possible or logical to presume any other intent, in the presence of the emphatic instructions communicated by the Minister of Interior Affairs to the Attorney-General, contained in an instrument which is of record, and in which this latter official is ordered to proceed to execute a compromise. If, for any reason, the attorney for the Government, exceeding his legal authority, should have granted a remission of the credit, which has not come to pass, such an act would have been void, and the Judge has no authority to impute to the parties the intention of performing an act, tainted, in its origin, by voidness.

But above and beyond all the considerations set forth, which are of themselves decisive, there exists a principle of law which prohibits the remission of an obligation emanating from an extra-judicial source, unless it is previously recognized as existing by the party obligated, or by virtue of a judgment declaring that it exists. In the case at bar the Company has persistently denied the existence of the obligation, the fulfillment of which it is sought to exact of it.

Giorgio Giorgi, in his work, entitled "Theory of Obligations," states, with reference to this point:

"All credits of whatsoever nature they may be, all obligations, conventional or otherwise, may be the subject of remission; it is naturally indispensable that they be derived from a clear and certain title, a reason for which it is customarily said that remission is applied to conventional obligations, because these only are those which ordinarily proceed from a sure title. An *ex lege* obligation, which arises from a quasi contract or an unlawful act, is not derived from a sure title, but from a judgment or from an act of acknowledgment of the same, on the part of the debtor; consequently, before the rendering of said judgment, or the execution of said acknowledgment, it cannot be remitted. Imagine, for example, that Titus has the right of obtaining from Caius indemnification for injuries for an unlawful act; who does not see that if Titus refrains from having his claim allowed, and paid, by a judgment, it cannot be said of it that he remits it, because, before the decision of the Judge was rendered, there was lacking certainty of the existence of the credit?"

Finally, it is proper to note that the article of our Civil Code which concedes the presumption of freedom from responsibility in favor of two or more joint debtors, because of a remission made, without reserve, by the creditor to one of them, is exactly similar to that of the Italian Civil Code, on which this last named author commentates.

In accordance with the principles set forth, and applying the law to the facts, the Court holds that the instrument executed by the Nation and General Manuel A. Matos, which has been analyzed, to be a compromise. It remains for the Court to decide definitely if this can work to the advantage of the joint debtors, and in view of a consideration of the provisions of our Civil Code, one a general provision in regard to the question of obligations, set forth in Article 1103, and which says: "Contracts legally entered into have the force of law between the parties," and another, which is a special provision with reference to compromise,

and is set forth in Article 1685, which says: "A compromise made by one of the parties interested does not prejudice or benefit the others," decides the question in the negative, and throws out, consequently, the exception set up by the attorney for the New York & Bermudez Company, namely, that said Company is free from responsibility.

The defence likewise seeks to establish that between the two decisions which the Court of First Instance rendered, one holding the exception of inadmissibility of the complaint to be unfounded in law, and the other holding the dilatory plea of lack of jurisdiction of the Court to be likewise unfounded, there exists a contradiction, because the Judges deciding the first matter found the Company to have been an accomplice in an insurrection, which is a vague imputation, while the Judge who decided the second proceeding found the particular act to be the Libertadora Revolution, in which there is imputed to him participation with the defendant Company.

And the defence asks, to which of these two statements, emanating from the same Court, is the Judge to subject himself? That according to the opinion of the first, the principal act out of which the action arises, is the fact that the Company supplied funds to the Libertadora Revolution, and material and moral support, from the beginning until the end of the fight; and, according to the judgment of the second, the principal act is the Libertadora Revolution, in which it is said the defendant Company participated; and, that, if the principal act out of which the action arises, is that stated by the interlocutory decision in regard to the inadmissibility of the complaint, separating that act from its results, without saying whether or not it is clothed with the character of a public crime, the lack of jurisdiction of the Venezuelan Courts is clear, manifest and indisputable; and, if the principal act out of which the action arises is not that, but rather what is stated in the decision which disallows the exception of lack of jurisdiction, then the supplying of funds cannot be the principal element giving juridic character to the act imputed, and this latter remains then with all the ear-marks of a political crime.

In the very words of the defence the Court finds this argument, set up in the form of a conundrum, to be cleared up and destroyed, when the attorney for the defendant Company says that the lack of jurisdiction of the Courts of Venezuela is manifest, if the principal act out of which the right of action arises is that stated in the interlocutory decree in regard to the inadmissibility of the complaint, separating that act from its results. Acts cannot be separated from their results, because those acts and those results, in strict union with each other, constitute a crime. A civil crime or quasi crime may be begun in one civil jurisdiction, and produce other results in another; the intention or the guilt, negligence or fault may pre-exist, and if this intention, this guilt, this negligence or this fault do not pass out of their latent state into the state of acts, there will be neither crime or quasi crime. As is seen, the act which determines the intention, or negligence, and the injurious act are two acts which constitute one sole, civil juridic entity. In the case in point, the decree as to the exception of the inadmissibility of the complaint established that there was imputed to the Company the civil crime of having supplied funds to Matos, in New York, with which to begin the campaign, etc.; it was there the crime began. The decree which decides the proceeding with reference to the lack of jurisdiction of the Court, states that the Courts of Venezuela are competent to take cognizance of the matter, because the injurious acts, damages for which are claimed, were performed in Venezuela; here we find the injury which must necessarily exist in order that the right of action should exist. There are two acts which constitute one sole act, and it is not possible, as contended by the defence, to separate them, because their close union or connection is what gives rise to the act which, in turn, gives rise to the action. If the injurious acts have not been committed, the defendant Company has been able to give money

to Matos with which to begin the campaign, without this constituting a crime; there existed the intention, one of the constituent parts of crime, but not the crime itself, and as no injurious act was performed, crime did not exist. An action may be begun either where the crime began to be committed, or where the acts were actually performed. Our Courts took jurisdiction, not long ago, over a claim against the representative in this City of a steamship company, for damages and losses caused by said Company without the territory of Venezuela.

The Court thus holds, as proved, that there exists neither real nor apparent contradiction, whatsoever, between the decrees which decided the incidental proceedings, and to which, furthermore, must be given legal force as *res adjudicata.*

The defence likewise alleges that the representative capacities attributed to Mr. Greene are not proved by legal evidence, nor that the New York & Bermudez Company formed part of the Asphalt Trust, to which reference is made in the complaint, because oral evidence is not admissible to prove facts which must appear in a public instrument, in accordance with the rules relative to the formation of corporations (Section 10, Title 7, Book 1 of the Code of Commerce); but the Court holds that these rules refer, in an absolute manner, to the obligations of partners or stockholders among themselves, and go to the bottom of the object for which the co-partnership or corporation was constituted; they cannot be extended to the case of obligations arising from civil crime, or quasi civil crime, because obligations which are then exacted from a corporation go beyond what is intended in the Articles of Incorporation, or Certificate of Association, and arise out of an act distinct from the purpose for which it was formed.

Our laws expressly enumerate the cases in which the testimony of witnesses is not admissible (Title 4, Part 2, Section 7, Book 3 of the Civil Code), and in none of those cases is it established that the evidence of witnesses is not acceptable to prove the existence of personal rsponsibility for acts constituting a civil crime, or quasi crime. Furthermore, the persistent defence of the New York & Bermudez Company is of itself, an express declaration, which the Court cannot pass over, of the fact that it acknowledged that it possesses the character under which it is sued, and that it is civilly responsible for the acts which those persons, who are said to be its employees, have committed, because its silence, in this regard, is an admission of the complaint as to this point, especially when the law (Article 255 of the Code of Civil Procedure) establishes that the improper designation of parties defendant may be set up as a preliminary exception to the complaint. The attorney for the defendant Company ends his defence with this last argument: "Responsibility arising from the act of another, which is the nature to-day sought to be given to this action, cannot be admitted without changing the record, but even under this inadmissible hypothesis, the action could not succeed; the complaint has stated that Greene was President of the National Asphalt Company and the New Trinidad Lake Asphalt Company, and the Director of the Seaboard National Bank and one of the Directors of the New York & Bermudez Company. He was not even the director (used in the sense of manager) in this last named Company, but only formed part (as the complaint says) of the Board of Directors, while as to the other Companies, he was President or Director (manager), according to the very statement of the plaintiff. And even in the supposed case that the treasonable acts were proven beyond doubt, there can be found no well founded reason to throw the responsibility of this case upon this last named Company, in which he was only a member of the Board of Directors (according to the complaint), and not upon the others over all of which, according to the statement of the plaintiff, he had the full power of representation; of the New York & Bermudez Company, he did not have the power of representation, because the plaintiff, itself, states that he

was only one of the members of the Board of Directors. An example may perhaps explain better, and we would wish that its solution could be asked of any one of the audience here—not of a man of letters, nor of a magistrate, nor of one conversant with legal technicalities—by asking him: "If a member of the Board of Directors of the Bank of Venezuela, or of the Bank of Caracas, or of the Venezuelan Insurance Company, or Electric Company, or of the National Glass Company, should go to Europe and there dispose of five hundred thousand (500,000) bolivares, belonging to the Company, in order to supply means necessary for the beginning of a revolution, what responsibility would exist on the part of the Company for that act?" He would immediately answer, "no responsibility, since that is not the business of the Company, nor within the scope of authority of one of its directors, nor within the authority of the Board of Directors; but, on the contrary, the Company would have the right to prosecute this Director for disloyalty, and sue him for reimbursement of its money."

The Court is of opinion that from the latter part of this argument is seen its impossible legal application to the case in litigation. As a matter of fact, the law establishes that the acts of an attorney in fact, within the limits of his powers, are considered as the acts of the principal, and our law provides (Subdivision 1, Article 1665 of the Civil Code) that with reference to matters in which the attorney in fact has exceeded his powers, the principal is not bound except when he has expressly or tacitly ratified the same.

"This ratification," writes Baudry Lacantinerie, "may even result from the principal's keeping silence. Such is the case when a mercantile firm has received advice of an act performed by its representative and has made no objection to the same (Contratos Aleatorios, No. 785)." At all events, culpability for unlawful acts of the manager, or head of a mercantile corporation, or of its attorney in fact, is the culpability of the corporation, and establishes its responsibility. No proof appears on the record that the Company has repudiated the acts of its employees, or prosecuted that Director for disloyalty, or sued him for reimbursement of its money. This silence on the part of the Company constitutes that tacit ratification to which the law alludes. This silence cannot be explained, in strict law, except in two ways: either the Company ratified those acts of its employees, or said acts, which are imputed to its employees, were not committed.

A consideration of the proof is what must clear up this point, and the Court, thinking that it has cleared up all questions of law presented on the arguments, and established the law, passes to the study of the facts, in the analysis of which it wishes to make the following observations:

First: That Avery D. Andrews, a witness presented by the defendant Company, testifies: that he was the Second Vice President and a Director of the National Asphalt Company from the 27th of March, 1901, until 1903 or 1904; that during that time he had knowledge of the business affairs of the New York & Bermudez Company; that he had both business and personal relations with General Francis V. Greene, who was President of the National Asphalt Company during the year 1901, and also the head and director of other asphalt companies with which the witness had relations; that there was a draft for One Hundred Thousand ($100,000) Dollars drawn against the Seaboard National Bank, under circumstances in which the Company, owing to reports it had received from its office in Caracas, considered itself injured, as to its interests, and defrauded, as to its rights, by titles granted by the Venezuelan Government to various portions of the asphalt lake, known as Bermudez Lake, which belonged to the Company; that one of said titles was called "La Felicidad"; that the Government of Venezuela had confirmed said title; that the Company was trying to obtain the annulment of said title; that there existed another title, called "La Venezuela"; and that both this title as well as

another, called "Lado Sur," and various others, the names of which he does not remember, were only provisional, but that the holders thereof and those supporting them urged the Government to confirm them; that the Company was fighting all these attempts; that the conduct and operations of the conspirators to defraud the Company of its rights are set out in detail in the letters which the Company received from its office in Caracas; that these letters show how the employees of the Government were concerned in the matter, with the object of extorting money from the Company; that he read extracts from certain letters of Mr. Carner, then Managing Director of the New York & Bermudez Company, in Caracas, addressed to the President of the New York & Bermudez Company, in New York, to the National Asphalt Company and to Mr. Thomas H. Thomas, President of the New York & Bermudez Company; that the Company obtained the intervention of the Government of the United States in order to suspend the executive proceedings under foot to despoil the Company; that the conspirators against the New York & Bermudez Company began an action against the Company, in the High Federal Court, the 16th of February, 1901, in order to compel it to recognize the validity of the title "La Felicidad"; that the Department of State in Washington informed the Company, in its final note of the 28th of February, 1901, that the Department could not intervene in the course of the judicial proceedings in Venezuela; that on the 27th of May, 1901, one of the original movers in the matter, the concessionaire of "La Felicidad," who had sold his share to Warner & Quinlan, of Syracuse, N. Y., appeared before the Parish Judge of Unión, and petitioned that various persons be cited to prove the quiet possession of Warner & Quinlan, in "La Felicidad," from January of the same year; that the Judge gave a certificate to the effect that Warner & Quinlan had been disturbed in their possession; that Warner & Quinlan, through their attorney, petitioned that possession be restored to them, and such restitution was ordered; that the New York & Bermudez Company, through its attorney, protested before the Judge of the Court of First Instance, in Carupano, against the decree; that the object of the conspirators to despoil the Company and obtain money from it had reached this point when General Matos went to New York, in the middle of the summer of 1901.

"General Matos," the text reads, "was a man of the highest position in Caracas * * Before the arrival of General Matos in New York none of the employees of the National Asphalt Company, or those of the New York & Bermudez Company, had had relations of any kind whatsoever with him. The higher officers of the National Asphalt Company, which controlled the New York & Bermudez Company, had themselves observed and given instructions to their subordinates in Venezuela, to observe the most perfect neutrality in the civil disturbances of that Country. General Matos, being in New York, visited the higher officers of the National Asphalt Company, and presented to them proof that he had, after many attempts, united all the parties and forces opposed to General Castro * * * * * General Matos stated that that part of the Country in which the property of the Company was situated, was, at that time, virtually governed by, and shortly would be in actual possession of, the allied forces * * * * * The Company had to do with a formidable revolutionary movement, which for some time, at least, would be in control of its property, and which would be friendly or hostile to it, according to the decision of the Company with respect to the demands of Matos. The Company found itself threatened, likewise, with the certain loss of its rights on the part of General Castro and those who conspired with him to injure it. The Directors of the National Asphalt Company, consequently, resolved to give General Matos the sum he asked, One Hundred Thousand ($100,000) Dollars, and the money was furnished by the Asphalt Company of America, a subsidiary Company of the National Asphalt Company, and by order of said National Asphalt Company * *

* * * Furthermore, sums amounting to Thirty Thousand ($30,000) Dollars were paid to General Matos shortly after the first payment of One Hundred ($100,000) Dollars; these additional sums were likewise furnished by the National Asphalt Company." The witness being re-examined by the attorney for the plaintiff, with reference to the manner in which the money was paid to Matos, answered: "A draft upon the Seaboard National Bank, drawn by his bankers, in Paris, and through the intermediation of Nicoll, Anable & Lindsay. The draft of One Hundred Thousand ($100,000) Dollars was drawn in November, 1901, and that check must have been signed by Thomas and Buxton"; the witness likewise adds that the Company gave all those sums to Matos in the desire to protect its properties in Venezuela.

Second: That the witness Thomas H. Thomas testifies: that it is true that during the month of November, 1901, as President, as he in fact was, of the New York & Bermudez Company, he ordered that there be paid from the treasury of the said Company the sum of One Hundred Thousand ($100,000) Dollars; that that payment was made to Nicoll, Anable & Lindsay, by order of General Andrews and Mr. Sewall; that he does not know for what purpose such payment was made; that he wished to protect himself in disbursing so large a sum, and requested a written order; that he has in his possession, and exhibits, an order written and signed by General Andrews and Mr. Sewall, to make such payment; that one of the signatures of said order consisted of the initials A. D. A., and that he can testify that said initials are those of Avery D. Andrews; that he likewise knows the signature of Sewall, and can assert that his is the signature written on that order, because he knew his hand-writing at that time. He does not remember whether or not said sum was charged to an account called "Government Relations"; he does know that such an account was kept.

At the request of the attorney for the plaintiff, the witness presented the order in question for the sum of One Hundred and One Thousand, Three Hundred and Sixty-Six Dollars and Sixty-Seven Cents ($101,366.67), the original of which is of record and reads, as follows:

"November 18, 1901, Respectfully referred to Mr. Thomas, N. Y. & B. Co., Pay Nicoll, Anable & Lindsay, Attys. on account $101,366.67. A. D. A.—A. W. Sewall."

Third: That General Francis V. Greene testifies: that during the year 1901, and for one or two years before that time, he was the Managing Director (President) of the New Trinidad Lake Asphalt Company, and that as an officer of said Company he knew the general business of the New York & Bermudez Company, as the former was substantially the owner of the entire capital stock of the latter. The witness being questioned in this form: "The witness will please state if, when he returned from Europe in 1901, he knew that John M. Mack, Avery D. Andrews and Arthur W. Sewall, or any of them, as representatives of the National Asphalt Company, or of any of the Companies allied with it, were in communication with said Manuel A. Matos, or were helping him with money, or in any other manner," answered: "The only knowledge I have of this matter comes from what Messrs. Mack, Sewall and Andrews told me. When I returned from Europe in October, 1901, I was surprised to learn from them that during my absence they had decided to support Matos in his fight with Castro. I told them that I thought they had committed a great mistake, because what they had done amounted to not acting in good faith with the Department of State, in Washington, which, up to that time, and to a considerable extent, by virtue of the representations made by me to Secretary Hay, had supported the Bermudez Company to the point of permitting it to continue in possession of its property. I told them that, in virtue of what they had done during my absence, it would be impossible for me to make further representations to the Department of State, in Washington, in favor of the Bermudez

Company, and, in truth, since that date I never went again to the Department of State in representation of the Asphalt Company. I told them, likewise, that I thought it was a great mistake, because it would cost the Company enormous sums of money in addition to the sum they told me they had already expended, which, as I remember, was about One Hundred Thousand ($100,000) Dollars, and that the Company was not in position to expend enormous sums of money, and that it would reap no good result, because, in my opinion, Matos could not triumph, and, finally, it would be known that the Company had assisted him, and this would weaken its position before the Venezuelan Government. I told them that in my opinion the proper policy which the Company should pursue was to continue with the support of the Department of State in Washington; but this they said was now impossible, because they had already made arrangements to support Matos, and if he triumphed, as they believed he would, the Company would then be able to protect its interests in Venezuela. In view of my opinion in the matter, very little was said to me of what had in reality already been done in support of Matos. The operation was carried on under the orders of the above named officers, and, in great part, without my knowledge—certainly without my knowledge with reference as to any detail, whatsoever. While I was President of the National Asphalt Company, Mr. Mack and his friends controlled the great majority of the stock, and he was Vice President of the Company, and was, at that time, virtually the one who controlled it."

Fourth: That the witness Charles Y. Baldwin ratifies his testimony sworn to before the Notary Public, of New York County, Joseph F. McLaughlin, in which testimony he says: "that during the years 1901 and 1902 he was employed by the New Trinidad Lake Asphalt Company, Limited, and was familiar with its accounts and business, and that said Company owned substantially all the capital stock of the New York & Bermudez Company." The deponent says: "that during the year 1901, and subsequently thereto, large sums of money were paid to Nicoll, Anable & Lindsay, attorneys for the New York & Bermudez Company, and that he had information that said money, or a great part of it, was expended in inciting and assisting a revolutionary movement, headed by Manuel A. Matos, against the constituted Government of Venezuela. Such expenses were incurred by the New Trinidad Lake Asphalt Company, Limited, or by the New York & Bermudez Company, and were charged, to deponent's best knowledge and belief, in the books of the last named Company, to an account called "Government Relations.'" Furthermore, says the witness, "that on one occasion, in the summer of 1901, he was in the company of Michael M. Schweizer, at 11 Broadway, where the offices of the National Asphalt Company, New Trinidad Lake Asphalt Company and New York & Bermudez Company were situated, and that there said Schweizer pointed out to him a man whom he, Schweizer, said was the said Manuel A. Matos." The witness ratifies his deposition in all its parts, with the correction that he was not an employee of the New Trinidad Lake Asphalt Company in 1901, but in 1902.

Fifth: That the witness Michael M. Schweizer ratifies his testimony sworn to before John J. Cunneen, Notary Public of New York County, and deposes: "that in the year 1901, he was an employee of the New York & Bermudez Company, and that on or about the 4th of May, of that year, he was sent to Caracas where he was employed as secretary to Henry W. Bean, who was, at that time, Managing Director of the said Company, in Caracas. He remained in Caracas, as Bean's secretary, until the middle of the month of July, 1901, when he was called to New York. "During my residence in Caracas," says the witness, "I frequently saw at the house, among the visitors of said Bean, a number of men who were known to me to be friends and partisans of Manuel A. Matos. The interviews between Bean and these friends of Matos were held behind

closed doors and with great care and secrecy. I returned to New York on the Steamer 'Maracaibo,' on which the said Manuel A. Matos, who carried letters and despatches from Bean for the officers of the Company in New York, which Bean did not wish to entrust to my care, was likewise a passenger. At about twelve o'clock, on the day following, the 23rd of July, 1901, I again met said Manuel A. Matos in the office of the New York & Bermudez Company, at 11 Broadway, in said City of New York. Said Matos told me that he was on his way to the office of Avery D. Andrews to present his letters, and after a short conversation Matos entered the office occupied by Andrews." The witness adds, likewise, that it was a matter generally understood among the employees of the Company, in New York, that the New York & Bermudez Company was giving material aid to the revolution in Venezuela. The witness being cross-examined by the attorney for the Company, reaffirmed what has above been stated.

Sixth: That the witness Lorenz A. Kuhn ratifies his sworn deposition made before Fletcher P. Scofield, Notary Public of New York County, and that in said testimony he says: that he is an engineer by profession; that in the month of January, 1895, he went to Guanoco and entered the employ of the New York & Bermudez Company in the capacity of engineer of the Company and, in particular, as engineer of the Company on the Steamer "Rescue," and was afterwards in charge of the machinery at Guanoco; that he remained as an employee of the New York & Bermudez Company, in the capacity above stated, until the year 1904, in which he returned to the United States, on leave of absence; that during the years 1901 and 1902, he was familiar with the operations of the representatives of the New York & Bermduez Company in Guanoco, Venezuela, and in Trinidad; that acting in direct accordance with the orders of Major Malcolm A. Rafferty, then manager of the New York & Bermudez Company, and of E. D. Jeffs, Superintendent of said Company at Guanoco, he, on various occasions, rendered material assistance to the revolutionary forces in Venezuela, which were then operating, under the supreme command of General Manuel A. Matos, against the constituted Government of the Country, and that he knew of many cases in which such assistance was rendered by direct orders of said Rafferty or of said Jeffs; that on one occasion passage was given, for Trinidad, to General Horace Ducharne and three other officers, on the steamer belonging to the New York & Bermudez Company, in order to save them from being captured by the forces of the Government. That on another occasion this steamer carried money to Trinidad for General Ducharne, General Ambard and Colonel Hueves, Luis Mahares and others, to be delivered to one Leon, who was then acting as Consul of the revolutionary forces in Trinidad, and that it carried back in exchange sealed packages and cases; that by order of said Rafferty he repaired, in the workshops of the Company, at Guanoco, a great number of arms for the revolutionary forces, consisting of more than one hundred (100) Mausers and other rifles; likewise revolvers and machetes, and at the same time he supplied the revolutionary forces with several Winchesters and ammunition; that on other occasions he carried correspondence between General Ducharne, Manuel A. Matos and the Consul Leon, at Port of Spain, likewise by orders of Rafferty and Jeffs; that frequently messengers were sent by Jeffs to Caño Colorado and to Guariquen to General Ducharne, when he was stationed at those places, to inform him of the movements of the Government forces; and that he always assisted such revolutionary messengers with money, provisions, boats or horses. The witness likewise deposes that in the month of June, 1902, Major M. A. Rafferty approached him with the proposition that he should go as first engineer with the steamer "Ban Righ," belonging to the rebel Matos, and lying at that time in the Port of Spain, Trinidad. Rafferty stated that, for the sake of appearances, it would be advisable for him to leave the

employ of the New York & Bermudez Company a short time previous to taking said position on the "Ban Righ," and stated to him that he would receive from the heads of the revolution a very considerable increase of salary; "Rafferty," he adds, "was very desirous that I should take the position, and it was an understood thing that I could at any time re-enter the employ of the Company. I refused to accept the position on the 'Ban Righ,' offered to me by Rafferty, and he was very much put out with me in consequence of my refusal." This deposition was ratified without any alteration, except the following: "I supplied cartridges but not rifles. I knew that rifles were given, but I did not give any, I simply have given cartridges." The witness, likewise, ratifies another sworn deposition, made before Fletcher P. Scofield, in which said witness asserts that various annexed photographs, which are exhibits, were taken by him in Guanoco, about the end of 1901, or the beginning of 1902, and certifies that they are true and correct photographs. He testifies, further, that the photograph, marked "A," shows the office of the New York & Bermudez Company; the photograph marked "B," shows the central office of the New York & Bermudez Company, at Guanoco, and the figures there show troops of the revolutionary forces resting, while said General Ducharne and others were attended to, within the central office, by the Superintendent of the New York & Bermudez Company. The photograph marked "C" shows the revolutionary troops in a car attached to a locomotive belonging to the New York & Bermudez Company, awaiting the arrival of their General to continue to the end of the railroad on the asphalt lake.

Seventh: That the witness Ezra D. Jeffs, named by the foregoing witness, testifies: that it is so that he was temporary superintendent, in charge of the New York & Bermudez Company, at Guanoco, from the 9th of February, 1902, until June or July, when they made him Superintendent, and that he was Superintendent from that time until the 1st of March, 1903, or thereabouts; that it is true that in his capacity as Superintendent he received orders from the General Manager of the New York & Bermudez Company to assist the revolutionists against the established Government of Venezuela; that he received those orders, he thinks, about the month of July, 1902; that he received orders from the Manager to fill any orders or grant any requests of General Ducharne, Revolutionary Governor of the Section of Maturin; that on various occasions he complied with and satisfied the requests of this General; that he has in his possession two or three orders signed by General Ducharne, with reference to the matter mentioned; that witness presents originals "A" and "B," and identifies same, and the document "C," which the witness says is a translation of "B," all of which are of record. The witness, furthermore, deposes that it is true that the Company had thirty rifles and a little more than ten thousand cartridges in the office at Guanoco, and that it is true that on various occasions, at the workshops of the Company in Guanoco, he caused repairs to be made to arms belonging to the revolutionists. The witness deposes, furthermore, that it is true that he carried to Dr. Pedro E. Rojas, Revolutionary Agent at Port of Spain, Trinidad, about twelve thousand Bolivares, and that, at the office of the Company in Port of Spain, this Venezuelan money was exchanged for English money, by order of the General Manager. The witness presents two checks, dated in Trinidad, against the Colonial Bank, signed by him, which are marked "D" and "E"; likewise a paper, dated the 12th of June, 1902, signed by Carlos A. Imeri, together with translation, papers which are marked "F1" and "F2"; likewise a receipt signed by P. Ezequiel Rojas, together with translation, papers which are marked "G1" and "G2"; likewise a letter, dated 18th of October, 1902, signed by Alberto Garanton, together with translation, papers which are marked "H1" and "H2." On cross-examination of the witness on his answers, he reaffirmed that Major Rafferty was his superior, in charge of the Company, and that with reference to Guanoco, he (Jeffs) was the Superintendent and the man responsible for the property; he, likewise, affirmed that, in permitting the transportation of

arms in cars belonging to the Company, he did not do so by force of duress, because, from the date of the commencement of the Revolution until the date on which he left there, he had never supplied provisions, clothing, transportation or any other thing whatsoever, of moral or physical support to the Revolutionists, by reason of threats or coercion, but in obedience to the orders of Major Rafferty, since the latter gave him to understand, in a conversation on board a United States Gunboat (Machias or Marietta), that any favors rendered them, such as rations, or help, or allowing the revolutionists to use the machine shops to repair their arms, were all right. The substance of that conversation, which he considered to be in the form of an order, was that he should assist to support the revolutionists, in so far as he might be able. Said witness further affirmed that the check presented for his identification, marked with the letter "E," signed by him and payable to the order of Pedro Ezequiel Rojas, was endorsed by Perez León, who was an employee of the New York & Bermudez Company in Trinidad.

Eighth: That the witness Frederick J. Buxton, a witness offered by the Company, testified: that he was, in or about the year 1901, Secretary and Treasurer of the New York & Bermudez Company, in New York, and with reference to the affairs of the New York & Bermudez Company, in Venezuela, he is only in the position of having knowledge with reference to shipments of asphalt; that he is at present (on the date of his deposition) in charge of the shipments of the Barber Asphalt Paving Company, with which the New York & Bermudez Company is connected, and that, consequently, he is interested in this litigation to that extent. The witness being cross-examined, as to whether he charged, or ordered to be charged by the book-keepers or by anyone else, the sum of $101,366.67, answered: "said sum was paid to Nicoll, Anable & Lindsay, our attorneys, by the New York & Bermudez Company"; that he signed the check and that he does not remember exactly by whose order; that Mr. Thomas refused to sign the check, when it was presented to him for countersignature, until he should have had an interview with somebody; the witness further deposes that the check for $101,366.67 was drawn against the National City Bank; that the Company gave a note to the Asphalt Company of America, and that the latter gave a check to said New York & Bermudez Company; that the check was deposited and the counter check on it drawn and paid to Nicoll, Anable & Lindsay; that he, the witness, thinks that, as Treasurer, he endorsed the check, made the deposit and drew against the New York & Bermudez Company. The witness, likewise, states that he had a conversation with Mr. Thurber in regard to the Revolution headed by Matos; that he, the witness, thinks that on one occasion Mr. Thurber and he spoke together in regard to the sum of $101,000, and simply observed that they would like to know what said money had accomplished and what had been done with it, and wondered whether it had been used for anything other than legal expenses; that he cannot recall anything further with reference to his conversation with Thurber, but that other things might have been said which made no impression on his memory. He further deposes that he saw in the newspapers, previous to his visit to Mr. Thurber, in the spring of 1904, the assertion or accusation that Castro pretended to have discovered that the New York & Bermudez Company had taken part with the Revolutionists against him in the Matos Revolution, and that he thinks that was a matter brought up in the conversation had with Thurber on that occasion.

Ninth: That Amzi Lorenzo Barber deposes: that Thomas H. Thomas showed him the original slip of paper on which was written as follows: "November 18, 1901, N. Y. & B. Co. Pay to Nicoll, Anable & Lindsay, $101,366.67" (signed) "A. D. A.—A. W. Sewall."; and that the deponent is familiar with the hand-writings of Avery D. Andrews and Arthur W. Sewall, and firmly believes that the initials A. D. A. and the name A. W. Sewall, which are found on the slip of paper which is in possession of Thomas, are respectively in the handwriting of Avery D. Andrews and Arthur W. Sewall; with reference to the balance of the testimony of Barber the Court finds that the witness

testifies on hearsay, and for that reason his testimony is not taken into consideration except as to that part of his deposition which has been inserted.

Tenth: That the witness Orray E. Thurber deposes: that in the year 1901, he was Treasurer of the Barber Asphalt Paving Company, and that previous to that date he had been Treasurer of the New Trinidad Lake Asphalt Company, Limited, and that in discharging the duties of said offices he had knowledge of the transactions and affairs of the New York & Bermudez Company; that during the year 1901 the National Asphalt Company, of which Francis V. Greene was President, owned all or substantially all of the capital stock of the Asphalt Company of America, which last named Company owned all the capital stock of the Barber Asphalt Paving Company and of the New Trinidad Lake Asphalt Company, Limited; that said New Trinidad Lake Asphalt Company, Limited, owned all or substantially all of the capital stock of the New York & Bermudez Company; that all of the business of the said New York & Bermudez Company was managed, controlled and directed by the employees of said National Asphalt Company; that in the month of September, 1901, the deponent was called on one occasion on the telephone by Stuart G. Nelson, Vice-President of the Seaboard National Bank of the City of New York, and of which bank the said Francis V. Greene was at that time one of the Directors; that Nelson stated to deponent that the said Seaboard National Bank had received from the Credit Lyonnaise, and held for payment, a certain draft for $100,000.00, drawn against the New Trinidad Lake Asphalt Company, Limited, and demanded that said draft be paid without delay; that deponent told said Nelson to take the matter up with Ira Atkinson, then Treasurer of the New Trinidad Lake Asphalt Company, Limited, and later the said Atkinson told deponent that, as he had received no notice with reference to said draft, and that as he likewise knew of no debt of said Company which obliged it to pay out such a sum, nor of any other reason for which the Company should pay out such sum of $100,000, he had passed the matter over to said Arthur W. Sewall, whom he accompanied to the Seaboard National Bank, where said Sewall and Nelson retired to a private room, and after the conference Sewall returned and ordered Atkinson to give a check for One Hundred Thousand ($100,000) Dollars to the order of Nicoll, Anable & Lindsay, who were at that time the attorneys of the New York & Bermudez Company, Sewall stating to Atkinson that said attorneys would pay said draft, all of which was done; that Atkinson later informed deponent that he had received instructions as to charging the sum, which had been paid for the account of the New York & Bermudez Company, ordering that Frederick J. Buxton, then Treasurer of the New York & Bermudez Company, should charge said sum, in the books of the Company, to the account called "Government Relations"; that later said Atkinson stated to the deponent that another draft for Thirty Thousand ($30,000) Dollars had been paid and charged in the same manner. The deponent further testifies that he was informed by Thomas H. Thomas, President, and by Frederick J. Buxton, of the New York & Bermudez Company, and by John K. Breeden and Charles Y. Baldwin, the book-keepers of the New Trinidad Lake Asphalt Company and of the New York & Bermudez Company, that payments of the drafts mentioned for One Hundred Thousand ($100,000) Dollars and Thirty ($30,000) Thousand Dollars had been charged to the account called "Government Relations"; that Charles Y. Baldwin told him that he had seen General Manuel A. Matos at No. 11 Broadway, New York, in the summer of 1901; that Baldwin was at that moment in the company of one Michael M. Schweizer, who had recently been employed as Secretary to Henry Willard Bean, and that Schweizer told Baldwin that he knew Matos well and was well acquainted with him. The Court notes that the said Nelson, Atkinson and Breeden, witnesses of the Company, did not testify, but that the witnesses Thomas and Baldwin did, which last named witnesses admit the reference made to them with respect to the payment of the draft of $100,000; and with respect to the reference made to Buxton, he observes that this witness declares that the payment of the draft of $100,000 was made; he denies in his testimony that he made this statement to Thurber, and on cross-examination

states what appears in the observation numbered "Eighth." With reference to the remaining points of Thurber's testimony, the Court finds that this witness testifies only on hearsay, and for that reason his testimony is not taken into consideration, except as to that part of his deposition which has been inserted.

Eleventh: That the witness Alvin Smith identified and acknowledged as to contents and signature the documents marked with the letters M, N, O, P, Q, R, S, T, U, V, W, and testifies: that he signed said documents in his official capacity, as Consul of the United States at Trinidad; that he signed papers for the "Viking," the Company's steamer, on various occasions, and although he had no authority from his Government to do so and knew that all papers for the despatch of vessels bound for Venezuela should be signed by the Venezuelan Consul, he, in everything that he did, acted under his own responsibility, and that the reason he was called to sign said papers, as American Consul, was that there was trouble with Venezuela and Major Rafferty could not obtain their signing by the Consul of Venezuela, for which reason he came to him.

Twelfth: That Frederick R. Bartlett testifies: that he was the technical mining agent and attorney for the Company, from the middle of the year 1902 until the sequestration was made of the Company's property, on the 28th of July, 1904, having been Superintendent during the last three months of this time.

Thirteenth: That the witness Joseph Perry testifies: that he discharged the duties of cashier, bookkeeper, second superintendent and Superintendent of the defendant Company, from 1897 to 1904.

Fourteenth: That the witness Neal B. Smith testifies: that he was in Guanoco, up to July, 1903, as cashier of the defendant Company, and that he is cashier thereof at its office, in Trinidad, at the moment of making his deposition.

Fifteenth: That the witness Frederick A. Holmes, presented on behalf of the Company, testifies: that he is, at the date of his deposition, an employee of the Barber Asphalt Paving Company, allied to the General Asphalt Company, a Company which owns the control of the New York & Bermudez Company, and that he has been an employee of these companies ever since he had been in Caracas; that he thinks that the New York & Bermudez Company entertained a certain ill will, because of the attitude of the Venezuelan Government towards the Company, in the litigation it was carrying on with reference to "La Felicidad"; that from observation and correspondence with the officers of the Company, he knew the state of affairs existing between the Government of Venezuela and the Company; that as private secretary of Mr. Ewart, he took part in the preparation or making of certain reports, which Mr. Ewart kept in a diary, giving the thread of current events and all matters relating to the litigation, political and military conditions of the Country, and which, by each mail he sent, with reference to these matters, to the New York office; that he thinks the intention of Mr. Ewart was to give impartial information, and that he reported events as he heard them; and he does not think that he gave any advice, whatsoever, in any way, either in favor of, or against the Revolution, or the Government.

Sixteentn: That the witness Carlos Dominguez Olavarría, as a witness for the Company, being its employee from 1901 to 1904, and interpreter of Major Rafferty on various occasions, appears, according to his own declaration, as having solicited witnesses in the name of the Company, and as elaborating proofs favorable to it.

Seventeenth: That William J. Ewart, a witness presented by the Company, testifies: that he was Managing Director of the New York & Bermudez Company, domiciled in Caracas, with authority to attend to any and all of the business matters of the New York & Bermudez Company in the United States of Venezuela, from the 11th day of July, 1902, until the first of September, 1903.

Eighteenth: That James Lewis Rake, a witness presented on behalf of the Company, testifies: that he was Managing Director of the New York & Bermudez Company, in Venezuela, from August, 1901, to August, 1902, when he was succeeded by William J. Ewart; that what Amzi Lorenzo Barber and Orray E. Thurber say in their depositions, with reference to the payment of money or assistance given by the New York & Bermudez Company to the Revolution of which General Manuel A. Matos was the head, is unqualifiedly false, and he says that they are false, because he received specific instructions from General Avery D. Andrews and Arthur W. Sewall, who most actively directed the affairs of the New York & Bermudez Company, as its officers, and that both in said instructions, as likewise in those forwarded him by Mr. John M. Mack, President of the Company, and those which he received from General Greene on his return from Europe, he was told that, as an American company doing business in a foreign country, one of its necessary duties was neutrality in the political strife of that country, and that he is sure that those instructions were fulfilled in so far as it was possible to do so.

Nineteenth: That the witness Frank D. Stephens, presented by the Company, testifies that he was Superintendent of the New York & Bermudez Company, in Guanoco, from 1897 until August, or September, 1901; that during the time he was in Guanoco, there were constant movements of troops, but that he could not say with certainty which belonged to the Government and which belonged to the Revolution; that on many occasions these troops asked provisions and they were given to them. They also asked arms and ammunition, which were never given to them; that up to the year 1901, in which he was there, he received orders to observe a strict neutrality in his relations with all troops.

Twentieth: That Charles C. Link, a witness presented by the Company, testifies: that he was an employee of the New Trinidad Lake Asphalt Company, Limited, from August, 1899, until July, 1902, at its office, No. 11 Broadway, New York; until 1901, as a stenographer and later as a stenographer and telegraph clerk. He denies having told Thurber what he states of him in his, Thurber's, deposition, and he says that it is known to him that on many occasions orders were given to the agents of the New York & Bermudez Company, in Venezuela, to observe an absolute neutrality, with reference to any revolutionary movement in Venezuela. The witness ratifies this declaration, stating that the only thing in it he can modify is, that he cannot say that he knew perfectly well everything that took place while he acted as telegraph clerk.

Twenty-first: That the witness V. Perez Leon, presented by the Company, testifies: that Mr. Lindsay, the attorney of the defendant Company in New York, prepared a statement for him to swear to and that he swore to it; that he advertises in papers as a translator; that at present, the date of his deposition, he was working, making a translation for the New York & Bermudez Company; that this translation he gives to Mr. Lindsay; that he was an employee of this Company, at Port of Spain, Trinidad; that he feels profound ill will towards the Venezuelan Government, which had exiled him; that Castro's reasons for hating him is that he is a friend of the Company, and that, every time the Government has desired to take away any of the rights of the New York & Bermudez Company, he has always written and spoken in the full belief that the Company had full right to the Guanoco Lake, by virtue of three titles, which no one in this world can refuse to admit as good, and which make the New York & Bermudez Company the owner of the asphalt lake situated in his Fatherland; that he entertains great ill will towards General Castro; that he went once as an employee of the Company to Major Rafferty to ask Ten Thousand ($10,000) Dollars of him, in the name of Matos, for the Revolution; that Rafferty refused that sum; that Rafferty advised his employees to observe full neutrality.

Twenty-second: That Robert Henry McCarthy testifies: that he was

Collector of Customs in Trinidad, from 1901 to 1903; he knows that the "Viking" is a transport used by the New York & Bermudez Company to carry workmen to Guanoco; that Rafferty asked advice of him with reference to the sailing and entry of the "Viking" from and to Trinidad, because of the difficulties arising out of the state of affairs in Venezuela; that the "Ban Righ" anchored near the Caroni buoy, but not at the accustomed anchorage; that he knows nothing of the transfer of arms from the "Ban Righ" to the "Viking."

Twenty-third: Phillip Scott testifies: that he was gunner, in Guanoco, from September, 1901, until July, 1904; that provisions were supplied the Revolutionists, because they compelled such supply; that he did not know that anything was sent to Venezuela by the "Viking," except provisions for the laborers in Venezuela.

Twenty-fourth: Alfred Webb testifies: that he was at the head of the warehouses at the mine of Guanoco, in 1901, or from 1901 to 1902; that he knows that Major Rafferty did not in any way assist the Revolution; that the Revolutionists sought provisions from the Company, under threats, and that the Company was forced to provide them; that the "Viking" never carried war supplies to Venezuela.

Twenty-fifth: Richard Ryner ratifies his sworn deposition and testifies: that he was of the crew of the "Viking" and quarter-master from 1901 to 1902; that he never saw or heard the Captain, or anyone else on board, detain or give orders to detain the boat at any intermediary point between Trinidad and Guanoco.

Twenty-sixth: Frederick Adolphus testifies: that the Revolutionists under the command of General Ducharne took possession of locomotive No. 3, of which he was in charge; that he saw the Revolutionists paying over money at the warehouses of the Company.

Twenty-seventh: Charles Arno ratifies his two sworn depositions in which he testifies: that he was an employee of the New York & Bermudez Company from the time the Company began its business in Guanoco; that he saw many acts of disorder committed by the Revolutionists in Guanoco; that he was employed in Guanoco by the Company during the Revolution.

Twenty-eighth: James Miles ratifies a sworn deposition, as to contents and form, in which he testifies: that he has been employed by the New York & Bermudez Company, as steward aboard the "Viking," from the latter part of the year 1901; that during the month of April, 1902, he was instructed by the Captain of the "Viking" to observe special care in putting out the lights promptly, when approaching places in which it might be possible that the Revolutionists would appear on the river; that the Captain said that the reason of such precaution was that he had been instructed by the Superintendent, in Guanoco, to avoid in every way possible being detained and even being seen, whilst he was on the river, because the Revolutionists had come molesting him in Guanoco, and he did not know to what point they might carry into effect their threat of detaining the steamer.

Twenty-ninth: Francis M. Cartland ratifies a sworn deposition in which he states: that he was employed by the New York & Bermudez Company and its allied corporations, from the 19th of March, 1900, to the 1st of September, 1903; that he came to Venezuela in July, 1901, and was, up to the 16th of December of the same year, secretary and clerk to J. Lewis Rake; that during the time he was in Venezuela he did not see or observe anything which might indicate support of the Revolution on the part of the Company; that his own conviction and knowledge is that the employees of the Company were ordered to observe absolute neutrality.

Thirtieth: Marcus A. Reilly, a witness presented by the Company, testifies: that he was chief of the refinery of the New York & Bermudez Company, from April, 1900, to the last of May, 1904; that he saw troops pass through Guanoco, but that, as he did not actually know them, he

could not say to what band they belonged; that they asked provisions and transportation over the lines of the Company; that he always treated them with respect and attended their wants, because he believed that to do so was best for the interests of the Company; that he never received any instructions from Guanoco, and that no one ever gave him instructions with reference to the treatment he should give the troops, either in one sense or another.

Thirty-first: The witness E. M. Cravath, presented by the Company, ratifies his sworn deposition made before Mr. E. M. Bill, Consular Agent of the United States at Shelburne, Nova Scotia, Canada; he says in his deposition: that he was the Manager of the New York & Bermudez Company in Venezuela, where he resided from the month of April, 1897, until December, 1901; that in March, or April, 1901, by order of the Directors of the National Asphalt Company, he returned to Venezuela as special agent with reference to the Warner-Quinlan suit, and remained there until February, 1902, in which month he returned to New York, that his instructions were that he should observe absolute neutrality with reference to any revolutionary movement; that no aid was ever given by the Company, or through him, while he was in Venezuela, to any revolutionary force; that he believes these orders were likewise complied with by the other employees; that the directors of the National Asphalt Company who sent him to Venezuela, were F. V. Greene and Avery D. Andrews; that he exercised no authority over the property, warehouses or other real property of the Company; that he never saw Matos' troops during the period in which he was at Guanoco, in the years 1901 and 1902; that from his personal acquaintance with Major Rafferty and his knowledge of his character, he does not think that Rafferty would have disobeyed orders and instructions, which might have been given to him by his superior officers, and aid the Revolutionists in Venezuela, and that if Major Rafferty assisted said Revolution, he thinks that he did so in pursuit of instructions; that Major Rafferty and J. L. Rake were those who gave him, orally, orders to observe neutrality; that he does not think that with reference to the offices at Guanoco help could have been given to the Revolutionists without his knowing of it.

Thirty-second: That the witness Gilbert M. Furman, presented by the Company, contradicts the witnesses Barber and Thurber, in so far as they refer to him.

Thirty-third: That the witness Geronimo Vincentelli testifies: that he was, from January, 1901, until October, 1903, General Agent of the defendant Company in the former State of Sucre; that Mr. Jeffs, Superintendent of said Company, stated to the witness, in Guanoco, that he was obeying higher orders which had been transmitted to him by the Agency of the Company in Trinidad, and by virtue of which he extended the most cordial hospitality to all the Chiefs of the Revolution, and rationed the troops of the Revolution under the command of General H. Ducharne; that the agency under the charge of the witness received private and secret instructions from the Agent of the Company, Mr. Rafferty, that the overland mail carrying service, specially established for the service of the Company, should carry letters to and from the Revolutionary Chiefs along the coast; that the Steamer "Viking," belonging to the Company, carried to Carupano, on two occasions, most important revolutionary correspondence for General Nicholas Rolando, which General Matos personally delivered to Major Rafferty, and which the latter delivered to the witness, ordering him to deliver the same to the family of Luis Marcano Betancourt, in order that it might reach the camp of General Rolando; that Major Rafferty personally ordered the witness to place that correspondence in the hands of Marcano Betancourt, a recognized revolutionary agent, to forward to Rolando, and that the witness did so; and that in the office of the Company in Trinidad the Revolutionists exiled in said Island were received with special attention. On cross-examination he says: That he does not consider as personal the acts of Mr. Jeffs, to which his testimony refers, be-

cause this latter named gentleman had told him that in so proceeding he obeyed orders which had been transmitted to him by the New York & Bermudez Company, represented in Port of Spain by its Agent, Major Rafferty; that in affirming that the correspondence which the mails carried to and fro and which he sent to Guanoco, was Revolutionary correspondence, the witness bases his assertion on the fact that part of it was personally delivered by officers of the Revolution, and that on some occasions such correspondence was left open, in order that the witness might personally, and safely and truly deliver it at the point of destination to which it was addressed; that Major Rafferty secretly called the witness into one of the rooms of his house on two occasions, in order to deliver into his hands, and with all the secrecy which the gravity of the commission demanded, letters which General Matos had delivered to him in Port of Spain, at the Queen's Park Hotel, in order that the witness might, in turn, see to it that they should reach the hands of General Rolando, encamped at San Jose, through the medium of the Revolutionary Agent at Carupano, Mr. Luis Marcano Betancourt; and on two or more occasions, and on the very date on which Carupano was besieged by the Libertadora Revolution, and the "Viking" sunk in said port, he called him into his room, without other object than to give the witness some oral instructions, of an order very different from the commercial and judicial affairs of the Company; that Mr. Colle, the Agent of the Company in Guariquen, voluntarily delivered to General Ducharne the long canoe belonging to the Company, and which was at said port, and that Mr. Colle, upon speaking personally with the witness, in Guariquen, said to him that in so acting he was obeying orders which had been communicated to him by Major Rafferty; that the reasons the witness has for stating that Messrs. Rafferty, Colle, Jeffs and the witness himself, in acting in accordance with what he has stated in this, his deposition, obeyed the express order of the New York & Bermudez Company, whose principal office was in New York, were that Rafferty always acted and gave orders in the name of the New York office of the said Company, and that one proof which the witness states he should offer is that he, Rafferty, read to him, the witness, a confidential letter from General Greene to Rafferty, which the witness was able to translate, assisted by Rafferty himself and a Spanish-English Dictionary, at Rafferty's house, in order that the witness might be more interested in rendering services favorable to the Revolution headed by General Matos.

Thirty-Fourth: That the witness Luis Marcano Betancourt testifies: that it is true that he received correspondence from the Revolutionary Committee, in Trinidad, from the hands of Mr. Vincentelli, Agent of the New York & Bermudez Company, and carried to Carupano by the Steamer "Viking," belonging to that Company; that the correspondence, to which he has referred, the witness was to address, and did address to certain Revolutionary Chiefs, who were in the neighborhood of Carupano, thus complying with the instructions transmitted to him by the Agent of said Company; and that nearly all the Revolutionary Chiefs in Carupano knew that the "Viking" brought the Revolutionary correspondence coming for them from Trinidad.

Thirty-fifth: That the witness Justo Marcano testifies: that Mr. Jeffs and Mr. Scott lived in Guanoco, and entertained and gave cattle to Colonel Perdermo and officers of Matos' Revolution; that the witness saw taken from the workshop of the Company's foundry in Guanoco, Mausers and cartridges belonging to General Ducharne's troops, with which the witness was armed, as likewise were various other persons; that on various occasions he saw shells being embarked on the long canoe belonging to the Company, at the port of Guariquen, and that Mr. Colle, the agent of the Company at Guariquen, received revolutionary correspondence; on cross-examination he testifies: that at Guanoco everything was at the command of Colonel Perdermo, machinery, rations, and everything, because the witness saw it, and that the witness was a carrier of mail in the employ of the Company, which mail was revolutionary in its character, because he carried it in secret and because Mr. Jeffs told him to throw it away, or destroy it, and not to allow it to be taken away from him by anybody.

Thirty-sixth: That the witness Ramon B. Luigi testifies: that on the 29th of March, 1902, the witness being then at Trinidad, the "Ban Righ," or "Libertador," arrived at said island, and that several days before General Matos, whom the witness served as secretary, had arrived; that the steamer arrived with its grates burned out, with its boilers useless and unable to continue steaming; that being in that state, it was necessary to think how the great amount of provisions and arms on board could be taken out, and that then, it being impossible to accomplish this in that English colony, someone suggested the idea of ordering another lot of arms and ammunition for use, until such time as that which was aboard could be taken out; that when the acquisition of another supply was spoken of, the witness suggested the idea that Major Malcolm Rafferty, representative of the New York & Bermudez Company, might assist him to this end; that General Matos called the witness aside, and told him to sound Mr. Rafferty and to notify him of the position he might take; that Rafferty told the witness that he wished to come to an understanding with General Matos, and that he could supply as much as half a million cartridges; that the witness desired to obtain a million; that he communicated to Matos what had occurred, and the latter told him to bring Major Rafferty to him at the Queen's Park Hotel, and that he should make an appointment with him; that it was arranged in this wise, and the witness introduced him (Matos), and Rafferty agreed to give Matos five hundred thousand rounds; that it is known to him that said supply, to the amount named, Matos actually received through the medium of Rafferty; that a great part was through the Caño de Buja, and one part through Guanoco, and that he does not know through what means the rest was delivered, because the witness sailed to invade the Country; that what was received through Buja was distributed by the witness himself to the army, and what came through Guanoco, if the Government has not found it, must be hidden in Guanoco itself; and that in private conversation with Mr. Rafferty the latter told the witness, when the latter proposed the idea that he should meet General Matos, that it would give him great pleasure to do so, especially as General Matos already held direct relations with the Directors of the New York & Bermudez Company in the United States, and that the latter had already supplied the Revolution in Venezuela with several millions.

Thirty-seventh: That the witness Juan Manuel Cabrera testifies: that the Chiefs of the Revolution who were camped at Guanoco received from the heads of the Bermudez Company rations for the troops; that stores collected at Guariquen by General Ducharne were brought to Guanoco, and kept in the warehouses of the Company; that Mr. Colle, Agent of the Company in Guariquen, received revolutionary correspondence and dispatched it by the long canoe "Diana," belonging to the Company, and, in addition to that, rationed the revolutionary guerrillas who came from Maturin, because the witness saw him in the door of the agency, and because on two occasions he sent to the witness' house to change small pieces of money to ration troops. On cross-examination he says: that Mr. Colle, in Guariquen, seemed to take the Revolution on his own shoulders, and wished to do more than Matos himself, and that the Company assisted the Revolution in its own behalf.

Thirty-eighth: That the witness Victorio Marin states: that it is true and that he knows that the canoe "Diana," belonging to the Company, and which the latter used in its mail service, landed at Ajies provisions and other supplies of war, because the witness saw it; and that those supplies were delivered to General Francisco Vasquez, and that he knows that Mr. Colle, the agent of the Company in Guariquen, voluntarily supplied said canoe for the purpose of transporting supplies. The witness Jose Maria Moreno likewise testifies that the canoe "Diana," belonging to the Company, carried supplies of war, which were landed by General Horacio Ducharne at Caño Colorado, and which had been brought from Trinidad.

Thirty-ninth: That the witness Carlos Faustino Ortega states: that the large supply, composed of Mausers, and cartridges which General Ducharne disembarked at Guanoco, Mr. Jeffs stored in the office of the Company; that

these supplies were shipped by Jeffs, at Guanoco, and Colle, at Guariquen, for Caño Colorado and Ajies, in the canoe "Diana," belonging to the Company, and that his canoe was likewise taken from the witness by peons and laborers of the Company to transport part of the same supplies; and finally, that the agent in charge of the New York & Bermudez Company came on various occasions to Guariquen, on behalf of the Revolutionary Chiefs, who were camped at Guanoco, and that he notified the Revolutionists that Government forces were coming through Guanoco, under the command of Colonel Sotero Serrano, and that such advice caused the defeat of those Government forces. The witness, Norberto Aguardo, likewise says: that the same agent in charge of the Company came on various occasions from Guanoco to Guariquen, on behalf of the Revolutionary Chiefs at Guanoco, and that it was he who carried the bulletins concerning the war and the gazettes of the Revolutionary Government to Maturin, which he distributed among the residents of Guariquen.

Fortieth: That Dr. Juan Vincente Camacho testifies: that the Steamer "Viking," belonging to the New York & Bermudez Company, carried Revolutionary correspondence from Trinidad to Maturin, which was sent by Dr. Pedro E. Rojas; that the duties which the Steamer "Viking" paid at the agency at Caño Colorado, the Revolutionist, Alberto Garanton, being the Collector of Customs at said port, were received in Trinidad by the Agent of the Revolution, Dr. Pedro E. Rojas.

Forty-first: That the witnesses, Francisco Soto M., Dr. A. Schaffernoth, A. H. Trujillo, Son, Silvestre Jule and Samuel Hughes, have ratified as to contents and signature a deposition, dated at Guanoco, the 21st of August, 1904, and referring to the discovery in the offices at Guanoco, under the floor, of a box containing Winchesters, another of cartridges and an explosive shell.

Forty-second: The witness Antonio A. Michelena testifies: that he was agent of the New York & Bermudez Company at Caño Colorado, up to March, 1902; that on the day that the Revolutionary party entered said place, he was named Collector of Customs by General H. Ducharne; that on that same day he received from the Captain of the steamer "Viking," Mr. Dalton, by order of Mr. Rafferty, Manager of the Company, the sum of Two Hundred Dollars ($200.00), American gold, with which to ration the forces which were being sent out by way of La Pica; that the offer of such money was voluntary, the Company from that moment coming to the understanding with the Revolution, through its employees; that he states, as a fact, that Major Rafferty was present when the money was delivered to the witness; that in his capacity as Collector of Customs he received the Revolutionary correspondence which the "Viking" frequently brought from Guanoco, and which was sent from there to the witness by confidential employees of the Company; that the employees of the latter, in Guanoco, gave support to the Revolution, giving supplies to all forces which came there, as likewise placing the railroad at the disposal of the same Revolution for the transportation of troops which were passing from that place to Guariquen, and that there were likewise repaired there, in the workshops of the same Company, all arms which might be sent there; that Mr. Jeffs, the Superintendent of the Company, sent to the witness a Winchester and some cartridges and provisions, through Mr. Rafferty; that said Jeffs addressed a letter to the witness in which he speaks of the remittance he was making to the witness of the Winchester and cartridges and provisions; that the Company likewise assisted any chief or officer passing that way; that Mr. Jeffs delivered to the declarant Eight Hundred and some odd Dollars, gold, for duties on merchandise which the company imported from Trinidad; that it is known to him that the "Viking," before the Revolution broke out, carried Revolutionary correspondence to Maturin. On cross examination he says: Referring to the New York & Bermudez Company, it of its own accord, through its employees, gave no occasion for the demand of supplies by the Revolutionary forces, as it was hoping for the triumph of the Revolution, in order that it might later triumph over the "La Felicidad" Company;

that the witness was authorized to see the correspondence which the "Viking" brought for the Revolutionary Chiefs, and that he read the same; that the said Revolutionary correspondence always came in a parcel separate from that of the private correspondence of the Company, and it was delivered to the witness by the Captain of the steamer "Viking" with great reserve.

Forty-third: That Mr. Jose Manuel Valdez testifies: that the store of supplies of General Ducharne, consisting of three hundred Mausers and eighty thousand rounds, was shipped on the railroad belonging to the Company; that together with the Revolutionary troops many employees of the Company went on the train; that they were fed in the Company's factory, and that money with which to ration the troops came from the office of the Superintendent of the Company, and that the Company supplied a canoe for the pursuit of Barnola, an employee of the Government, at Caño Colorado.

Forty-fourth: That the witness Jesus Maria Diaz testifies: that at the house in which Mr. Geronimo Vincentelli had the agency of the Company at Carupano, Mr. Rafferty told him, Vincentelli, that the witness might receive letters of the *Libertadores* who were at Ajies, Coicaur and El Pilar, for delivery to Vincentelli, as mail belonging to the Company itself, enroute from Carupano to Guariquen; that Rafferty gave this order through an interpreter, in the presence of the witness, and that on various occasions, the witness received Revolutionary letters from various officers, among these, from Mamerto Arias and Pablo Moreno, which letters the witness delivered to Vincentelli in Carupano. The witness Juan Bautista Diaz testifies to the same effect as the preceding witness.

Forty-fifth: That the witness Ramon Mina refuses to answer the question put to him on behalf of the Government.

Forty-sixth: There were identified and acknowledged, as to contents and form, by Dr. Manuel A. Ponce and Carlos Dominguez Olavarria, the letters, which are of record, signed by them and presented for their identification.

All the proof submitted in this case having been analyzed as above, the Court proceeds to weigh the same, for which purpose it will take into consideration the provisions of law in relation to the question contained in the second part of Section 7, Title 4, of the Third Book of the Civil Code, and in the first and second parts of Section 8, Title 2, Book 2 of the Code of Civil Procedure, and, likewise, the decisions at law, as well as justice and equity. It does not escape the judgment of the Court that the testimony of witnesses, owing to the discretion the law gives the Judge in weighing the same, is evidence which has always been characterized as dangerous by all authorities, and in the examination of it the Judge must proceed with great care. "When the matter is grave and complicated," writes one of our most reliable commentators, "as in trials for the punishment of crimes and quasi crimes, and others in which the evidence contains all the substance of debate, and where to the evidence of one witness there is opposed the evidence of another, everything depends upon the care of the Judge in examining it as to all its surroundings and details, and upon his uprightness and impartial weighing of the same. He must not measure merit by the number of witnesses, but by the force of conviction which he evolves from conflicting statements, in the light of truth, in accordance with the apparent truth of the facts inquired into of all answers and reasons, and the greater or lesser credibility of the witnesses." (Studies on the Venezuelan Civil Code of Procedure by Dr. Ramon F. Feo).

Sanojo writes with reference to the same matter: "Two corroborating witnesses will prove a fact, but it is only after the Court has found them to be worthy of credit, by not conflicting with other proofs, counting among these weighty, precise and agreeing presumptions (Article 1134 of the Civil Code in force), and because the reasons of their statements are

logical and reasonable, and because of the confidence they merit by their lives and habits, the profession they exercise, their education, special knowledge of the matter in question and other similar circumstances. The law has desired to establish certain rules, at the same time leaving the Courts sufficient liberty in the consideration of dangerous proof, by making them in part Judges, and in part, jurors.

"It may happen that both parties prove their respective claims by means of witnesses; by some, perhaps, who do not individually know of the existence of the fact, but who jointly prove the existence of the same; and in such case one must not decide according to the greater number but rather according to those, whom, according to one's good judgment, one finds speak the truth. The Law of Treaties so provides and reason so counsels." (Sanojo-Institute of Venezuela Civil Law, Volume 3, Page 206.)

"In order to render his judgment a Judge is not bound," writes Ricci (Treatise on Facts, Page 393), "by the existence of a greater or lesser number of witnesses; in the same way that he may give credence to one sole witness, he may likewise refuse it to the similar testimony of a number of witnesses, if he is convinced that by reason of the interest they might have in the litigation, owing to their personal standing or any other reason, their testimony does not merit credence."

Italian Law provides that the weighing of evidence, and credence which may be owing to witnesses, is the function of the Judge. (Court of Cassation of Turin, May 5, 1858, X1364.) This law is the same as that of all civilized systems of legislation. Because "when the law orders that the value, as evidence, of the testimony of witnesses shall be weighed according to rules or reasonable criticism, it does not impose upon the Judges the duty of counting but rather of weighing the proofs, leaving them the liberty of exercising prudence and reason to form their convictions." (Decision of the 15th of June, 1864, of the Supreme Court of Spain.)

"To constitute full proof the testimony of two witnesses, each corroborating the other, is necessary. When the witnesses do not corroborate each other, they are said to be single. This singleness may be cumulative, that is to say, it may result from statements, each of which assists the other and which are capable of supplying legal conviction, in which case they constitute proof, and the Court must so hold." (Sanojo, Work and Volume cited, Page 207.)

Our Civil Code fixes for the Courts the standards they must observe in the weighing of the testimony of witnesses, and provides in Article 1324: "Two witnesses, each corroborating the other, constitute full proof, except in the cases where more may be exacted by special provisions of law. There shall be considered, also as full proof, the testimony of witnesses each of whom does not corroborate the other, but who together show the existence of the fact in point. The declaration of one single witness joined to that of another, who complements the same, may constitute full proof. The Court shall examine as to whether or not the depositions of the witnesses agree, as between themselves, and with other proofs; and shall carefully judge the motives for making the statements and the confidence the witnesses merit, owing to their lives and habits, the profession they exercise and their surroundings."

Article 1326 of the said Code likewise says: that "he who has an interest in the result of a suit, even though it be indirect, cannot testify;" and Article 1334 of the same Code orders that presumptions which are weighty, precise and agreeing should be taken into consideration.

Applying, perforce, the foregoing law, and likewise the provisions of law in regard to the subject matter, to the evidence in this action, the Court finds:

1. That the declaration of the witness Avery D. Andrews, presented by the Company, which the Court must consider as exceptional in im-

portance, owing to his office of Director and Vice President of the National Asphalt Company, in which capacity he testified, joined with the deposition of the witness General Francis V. Greene, President of the New Trinidad Lake Asphalt Company; Thomas H. Thomas, President of the New York & Bermudez Company, and Frederick J. Buxton, Secretary and Treasurer of the same Company, of New York; and Charles Y. Baldwin, a former employee of the New Trinidad Lake Asphalt Company, Limited, Amzi Lorenzo Barber and Orray E. Thurber, constitute evident proof, and convincing, of the fact which is the principal cause of this action, that the New York & Bermudez Company supplied sufficient money to General Manuel A. Matos to begin in Venezuela the Revolutionary campaign styled "Libertadora."

2. That by the testimony of the witnesses, Thomas H. Thomas and Amzi Lorenzo Barber, it is proved that the initials A. D. A. and the signature A. W. Sewall, placed at the foot of an order for a draft of $101,366.67, are respectively the initials and signature of Avery D. Andrews and Arthur W. Sewall, because as they say, the handwriting of these last named individuals is well known to said witnesses.

3. That it appears from the record that the defendant Company carried an account called "Government Relations."

4. That it is not proved that the above named sum was charged to said account.

5. That it is proved in the record by the depositions of General Francis V. Greene, President of the National Asphalt Company and Managing Director of the New Trinidad Lake Asphalt Company, Limited, Avery D. Andrews, Vice President and Director of the National Asphalt Company, Frederick A. Holmes, an employee of the Barber Asphalt Paving Company, E. M. Cravath, James Lewis Rake and William J. Ewart, at one time Managing Directors, respectively, in Venezuela, of the New York & Bermudez Company, Charles Y. Baldwin, Orray E. Thurber and Charles C. Link, former employees of the New Trinidad Lake Asphalt Company, Limited, Michael M. Schweizer and Francis M. Cartland, employees of the New York & Bermudez Company, and Amzi Lorenzo Barber, former President of the National Asphalt Company, that the New York & Bermudez Company belongs to one of those American associations, called Trusts; that said New York & Bermudez Company was substantially owned, as to all its capital, and managed by the New Trinidad Lake Asphalt Company, Limited, which, in turn, was controlled and owned, as to a great majority of its capital stock, by the National Asphalt Company.

6. That it is proved by the depositions of the witnesses Andrews, Schweizer & Baldwin that General Matos visited the office of the New York & Bermudez Company in New York.

7. That it is not proved that General Francis V. Greene had any interviews or relations with General Matos, or that he assisted the Revolution which the latter commanded, or that the purchase of a steamer and war supplies was agreed upon between them.

8. That it is not proved that the appearance on the coast of Venezuela of a steamer armed for war, called the "Ban Righ," was the result of the operations of Greene in Europe.

9. That by the depositions of Erza D. Jeffs, Superintendent of the New York & Bermudez Company in Guanoco, from February, 1902, to March, 1903, of Lorenz A. Kuhn, by profession an engineer, and formerly engineer of the steamer "Rescue," belonging to the Company, and later intrusted with the machinery at Guanoco from 1895 to 1904, of Geronimo Vincentelli, General Agent of the defendant Company in the former State of Sucre, from 1901 to 1903, of Antonio A. Michelena, Agent of the New York & Bermudez Company at Caño Colorado, of Luis Marcano Betancourt, Ramon B. Luigi, Juan Manuel Cabrera, Carlos Faustino Ortega, Dr. Juan Vincente Camacho, Norberto Aguado, Jesus Maria Diaz, Justo Marcano and Juan Bautista Diaz, the act charged to the defendant Com-

pany of having supplied funds and rendered moral and material support to the Revolution through its agents in Venezuela, appears, in the opinion of the Court, as fully proved.

10. That it is proved by the declarations of the witnesses Vincentelli, Kuhn, Marcano Betancourt, Dr. Camacho and Michelena that the steamer "Viking," belonging to the Company, carried revolutionary correspondence between Port of Spain, Trinidad and Venezuela.

11. That from the depositions of the witnesses, Vincentelli, Marcano Betancourt, Justo Marcano, Cabrera, Marin, Kuhn, Jesus Maria and Juan Bautista Diaz. it appears as fully proved that transportation of revolutionary correspondence was effected by employees of the defendant Company, between the various points at which the Chiefs of the Revolution were operating, and likewise on the canoe, "Diana," belonging to the same Company.

12. That from the depositions of the witnesses Erza D. Jeffs, Justo Marcano, Juan Manuel Cabrera and Carlos Faustino Ortega, it is fully established that a quantity of stores belonging to the Revolutionists was deposited and cared for in the offices of the defendant Company at Guanoco.

13. That the witnesses Marin, Moreno, Ortega and Justo Marcano proved by their depositions that war supplies for the Revolutionists were, on many occasions, transported on the canoe, "Diana," belonging to the defendant Company.

14. That by the depositions of the witnesses to which the forty-first observation refers, the discovery, in the offices at Guanoco, under the floor, of a box containing war material is proved.

15. That the witnesses Frederick J. Buxton, Frederick A. Holmes, Carlos Dominguez Olavarría and V. Perez León, presented by the defendant Company, state that they have an interest in the result of this action.

16. That the objection interposed by the attorney for the defendant Company against the witnesses to whom he refers on the record, was not duly sustained, as provided by Article 366 of the Code of Civil Procedure.

17. That the four manifests of cargo shipped on the steamer "Viking," belonging to the defendant Company, the crew roll of said steamer and six additional documents, sealed and signed by the Consul of the United States of North America, in Trinidad, were identified and acknowledged as to contents and form by said Consul, and it appears by the depositions of other witnesses, which are of record, that the "Viking" made several trips between Trinidad and Venezuela, under papers issued by the American Consul at the request of Major Rafferty.

18. That the depositions of the witnesses Amzi Lorenzo Barber and Orray E. Thurber can only be taken into consideration as to that part to which the ninth and tenth observations refer, as being corroborated.

19. That the letters of Dr. Manuel Antonio Ponce and Mr. Carlos Dominguez Olavarría, for the reason that they are letters exchanged between third parties, cannot be considered by this Court, in accordance with the provisions of Article 1301 of the Civil Code.

20. That the document presented by the attorney of the defendant Company for identification and acknowledgment by the signers thereof, Robert Morrison and D. Moralejo, was not identified and acknowledged by the latter.

21. The defendant Company has endeavored to prove, by the oral testimony of several employees of the Company, that the assistance rendered the Revolutionists by employees of the Company was compelled by force, but it has in no manner overcome the proof of the plaintiff that on many occasions such aid was voluntarily given.

22. That, taking into consideration the motives of the parties making the depositions and the credit to which the witnesses are entitled, by reason of their profession, life and customs, the Court cannot slight the word of the

Directors, Presidents, Agents and other superior officers of a civil or mercantile company, in order to give weight to the testimony of inferior employees; and, in the present case, where it is sought to establish the responsibility of a company for a civil crime, the Judge considers that fear and gratitude, in addition to individual responsibility which might exist as between said employees and the defendant Company, owing to the fact that process is had in a foreign country, is more than sufficient to give direct motives for showing partiality in their testimony. Wherefore, the Judge, in compliance with the provisions of Article 367 of the Code of Civil Procedure, must throw out the testimony of those witnesses, which appears of record in these proceedings and contradicts the facts which the Court has found proved, as they have no authority to give the lie to their superior officers, and who by reason of their employment have not been able to acquire knowledge of the negotiations or resolutions of high interest of the defendant Company. Those witnesses state, some, that they are at the present time inferior employees of some of the companies which form the Asphalt Trust; others, that they were employees of the New York & Bermudez Company up to the time it was seized, in 1904, and the Judge must suppose the first to have the direct interest in the matter, and the second to have the indirect interest, to which the law refers. Other witnesses have scarcely had any knowledge of the facts which are charged in the Libel, either because it was not their business to know of them, owing either to the short time they were at Guanoco, or owing to the fact that they had left Venezuela before the development of the Revolution; and the Court should not take them into consideration.

Wherefore, this Court, considering:

1. That the Civil Court of First Instance of the Western Section of the Federal District does not consider itself as embraced within any of the causes provided by Article 117 of the Code of Civil Procedure.

2. That Article 45 of the National Constitution does not constitute an impediment to the Judge's taking cognizance of this cause and rendering decision therein.

3. That the action is not contrary to law.

4. That the agreement entered into between the Nation and General M. A. Matos is a compromise, and, in accordance with the provisions of Article 1685 of the Civil Code, does not benefit the defendant Company.

5. That there is no contradiction whatsoever between the decisions of the Court of First Instance which decided the exceptions of inadmissibility of the complaint and lack of jurisdiction of the Court.

6. That the acts of an attorney in fact are considered as acts of the principal, and that, in cases in which the powers granted are exceeded, the silence of the principal implies tacit ratification.

7. That the New York & Bermudez Company, in accordance with the provision of the sole sub-division of Article 1665 of the Civil Code, ratified by its silence the criminal acts committed by its Directors, Managers and Agents.

8. That it is proved on the record that those criminal acts, the cause of this action, were committed by the employees of the Company and in their capacity as Directors, Managers or Agents.

9. That it is proved on the record that the New York & Bermudez Company belongs to an association of mercantile corporations engaged in the asphalt business.

10. That from the proofs taken it is fully proved that the corporation, New York & Bermudez Company, through its Directors and Managers in New York, supplied sufficient money to General Manuel A. Matos to begin his revolutionary campaign in Venezuela, and gave moral and material support to the Revolution, through its agents in Venezuela.

11. That these acts form the basis of this action.

12. That in accordance with the provisions of Article 1122 of the Civil Code, the defendant Company is obliged to reimburse the Nation its damages and losses occasioned by such acts.

13. That the total amount of damages and losses claimed by the plaintiff cannot be reasonably and with prudence fixed by this Court, as said damages and losses are not in their entirety such as can be measured in money, and, consequently, as established by all systems of jurisprudence and as the law orders and the complainant demands, the appraisal of experts, provided by Article 185 of the Code of Civil Procedure, is in order.

14. That the law provides that with reference to obligations arising or growing out of a civil crime or quasi crime, reparation must be made for moral damages, since in these cases the creditor is a creditor against his own will, which is the opposite of what happens in contractual obligations, in which he who contracts might or might not have contracted or have failed to take all necessary precautions in contracting.

15. That in the course of this action both the law as well as the acts on which the action is based have been proved.

Wherefore, administering justice in the name of the Republic and by authority of the law, this suit is declared to be well founded in law, and, consequently, the New York & Bermudez Company is condemned to pay the sum of 24,178,336.47 Bolivares, to which sum amount the disbursements made by the National Treasury to repress and overthrow the Revolution, as appears of record, and, in addition, to compensate the Nation, in accordance with the finding of the experts, for the damages and losses immediately hereinafter enumerated:

The damages and losses are:

1. The discredit which the Venezuelan Nation may have suffered as a consequence of the war, in the estimation of other Nations with whom it carried on international or mercantile relations.

2. The loss of Venezuelan citizens, lost to commerce, agriculture and the industries and activities of republican life, as a result of the war.

3. The necessity for the creation of a war tax which produced from February, 1903, to the 30th of June, of the same year, 3,867,530.74 Bolivares, and from July, 1903, to the 30th of June, 1904, 12,928,870.34 Bolivares.

4. The decrease in the Custom House returns, which from 29,940,888.96 Bolivares, in the year 1900 to 1901, fell to 6,081,429.42 Bolivares in the year 1902, and to 4,079,185.45 Bolivares in the year 1903.

All of which appears from the proof submitted for such purpose and which is of record.

And, as in the opinion of the Court it does not appear that there was any rashness in the defense of this action, it orders that there is no special condemnation to the payment of costs.

Given and sealed at the Court Room of this Court, in the Palace of Justice, in Caracas, on the 12th day of the Month of August, 1907.

In the 97th year of Independence and the 49th of the Federation.

(Signed) JUAN LISCANO.

VINCENTE E. VELUTINI,
Secretary.

It is a true copy.—Dated as above.—VELUTINI.

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